



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

FINAL DECISION

June 25, 2013 Government Records Council Meeting

Michael Lamanteer
Complainant

Complaint No. 2012-198

v.

County of Gloucester
Custodian of Record

At the June 25, 2013 public meeting, the Government Records Council (“Council”) considered the June 18, 2013 *Reconsideration* Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the amended findings and recommendations. The Council, therefore, finds that:

1. The Custodian has established in his request for reconsideration of the Council’s May 28, 2013 Interim Order that 1) the GRC's decision is based upon a “palpably incorrect ... basis” and 2) it is obvious that the GRC did not consider the significance of probative, competent evidence; to wit, the GRC did not consider the Custodian’s SOI submission when rendering its decision. Thus, the Custodian’s request for reconsideration is granted. 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).
2. The Council rescinds paragraphs 1-4 of its May 28, 2013 Interim Order and finds that the Complainant’s cause of action was not ripe at the time of the filing of this Denial of Access Complaint; to wit, the Custodian provided a response to the OPRA request within the statutorily mandated seven (7) business days and properly sought a two-week extension of time to respond to said request. Further, the extension was reasonable based on the volume of the request and the fact that the records responsive were in storage. Also, the Council notes that the Custodian has already provided the requested records to the Complainant. Thus, this instant complaint is materially defective and therefore should be dismissed. See Scheeler v. Township of Galloway (Atlantic), GRC Complaint No. 2012-151 (Interim Order dated May 28, 2013).

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 25th Day of June, 2013

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

Steven Ritardi, Esq., Acting Chair
Government Records Council

Decision Distribution Date: June 27, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
Supplemental Findings and Recommendations of the Executive Director
June 25, 2013 Council Meeting

Michael Lamanteer¹
Complainant

GRC Complaint No. 2012-198

v.

County of Gloucester²
Custodian of Records

Records Relevant to Complaint: Tax assessment for land improvement for years 1975 through 2009 for Block No. 42 Lot No. 3.

Request Made: June 6, 2012

Response Made: June 22, 2012

GRC Complaint Filed: June 28, 2012³

Background

At its May 28, 2013 public meeting, the Council considered the May 21, 2013 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, found that:

1. The Custodian failed to bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. The Custodian failed to respond to the Complainant's OPRA request. Further, the Custodian failed to respond to the GRC's request for the Statement of Information. Thus, the Custodian failed to bear his burden of proving a lawful basis for a denial of access to the requested records. N.J.S.A. 47:1A-6. As such, the Custodian must disclose the requested records to the Complainant.

¹ No legal representation listed on record.

² Robert N. DiLella, Custodian of Records. Represented by Anthony J. Fiola, Esq., Assistant County Counsel.

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

3. **The Custodian shall comply with item #2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁴ to the Executive Director.⁵**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

The Council distributed its Interim Order to all parties on June 3, 2013. On June 7, 2013, the Custodian requested that the Council reconsider its May 28, 2013 Interim Order based on a mistake.

The Custodian contends that the Council erred by finding that the Custodian failed to respond to the GRC's request for a Statement of Information ("SOI.") The Custodian certifies that he submitted his SOI to the GRC on October 1, 2012, via e-mail and regular mail in compliance with the GRC's request.⁶ The Custodian asserts that the Council also erred by finding that he failed to bear his burden of proving that he timely responded to the Complainant's OPRA request. The Custodian certifies that his SOI provides proof that he responded to the Complainant's OPRA request on June 22, 2012, seven (7) business days following receipt of said request, seeking a two-week extension of time to fulfill the request due to its volume and because records were in storage. Notwithstanding the extension of time, the Custodian certifies that he provided the Complainant with the requested records on June 26, 2012, June 27, 2012, June 29, 2012 and July 3, 2012, all within the extended time period. Finally, the Custodian certifies that in compliance with paragraph 3 of the Council's May 28, 2013 Interim Order, he is providing the requested records to the Complainant on this date, despite having already provided said records in 2012.

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

⁴ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁵ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

⁶ The Custodian attaches copies of both submissions to the GRC addressed to Darryl Rhone, Case Manager. The GRC is unaware as to why these submissions were not in the case file and Mr. Rhone is unable to be questioned as to their absence since he is no longer employed by the GRC.

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)*.

Here, on June 7, 2013, the Custodian filed the request for reconsideration of the Council's Order dated May 28, 2013, four (4) days from the issuance of the Council's Order and, therefore, has timely submitted said request.

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 request for reconsideration, the Custodian provided his SOI submission to the GRC dated October 1, 2012, which he sent via e-mail and regular mail. In said SOI, the Custodian certifies that he received the Complainant's OPRA request on June 13, 2012, and responded on June 22, 2012, the seventh (7th) business day following receipt of said request, seeking a two-week extension of time to fulfill the request. The two-week extension expired on July 6, 2012. The Custodian certifies that he provided the Complainant with the records responsive to his request in separate batches on June 22, 2012, June 26, 2012, June 27, 2012, June 29, 2012 and July 3, 2012, all within the extended time period.

The Custodian asserts that the Council based its May 28, 2013 decision on inaccurate facts because the Custodian did provide the GRC with his SOI submission. As such, the Custodian states that his basis for reconsideration is a mistake.

As the moving party, the Custodian 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 ... basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence. *See Cummings, supra*. Here, the Custodian has submitted proof that he provided the GRC with his SOI submission on October 1, 2012, via e-mail and regular mail. The e-mail address for the GRC Case Manager and the GRC's mailing address contained on said submission are correct.

Therefore, the Custodian has established in his request for reconsideration of the Council's May 28, 2013 Interim Order that 1) the GRC's decision is based upon a "palpably incorrect or irrational basis" and 2) it is obvious that the GRC did not consider the significance of probative, competent evidence; to wit, the GRC did not consider the Custodian's SOI submission when rendering its decision. Thus, the Custodian's request for reconsideration is granted. Cummings, supra; D'Atria, supra; Comcast, supra.

The Council must consider the Custodian's SOI submission to determine if the Council's findings in its May 28, 2013 Order should be amended or rescinded.

In Scheeler v. Township of Galloway (Atlantic), GRC Complaint No. 2012-151 (Interim Order dated May 28, 2013), the complainant filed a Denial of Access Complaint on the fifth (5th) business day following the submission of said request. The custodian provided an immediate response to the complainant's request for immediate access records and sought an extension of time until May 18, 2012, the seventh (7th) business day following receipt of said request. The Council held that:

[t]he Complainant's cause of action was not ripe at the time of the filing of this Denial of Access Complaint; to wit, the Custodian had not denied access to any records responsive to the Complainant's May 9, 2012 OPRA request because the Custodian properly requested an extension of time until May 18, 2012 to respond to said request. The request for an extension was reasonable. Thus, the instant complaint is materially defective and therefore should be dismissed.

Here, the Custodian certified that he received the Complainant's OPRA request on June 13, 2012, and responded to said request on June 22, 2012, the seventh (7th) business day following receipt of said request, seeking a two-week extension of time to fulfill the request due to its volume and because the records were in storage. The two-week extension was to expire on July 6, 2012, yet the Complainant filed this Denial of Access Complaint on June 28, 2012. As of the filing date, the Complainant had not been denied access to any records. Furthermore, at this time the Complainant is in receipt of the responsive records, as the Custodian certified he twice turned them over to the Complainant.

Therefore, the Council rescinds paragraphs 1-4 of its May 28, 2013 Interim Order and find that the Complainant's cause of action was not ripe at the time of the filing of this Denial of Access Complaint; to wit, the Custodian provided a response to the OPRA request within the statutorily mandated seven (7) business days and properly sought a two-week extension of time to respond to said request. Further, the extension was reasonable based on the volume of the request and the fact that the records responsive were in storage. Also, the Council notes that the Custodian has already provided the requested records to the Complainant. Thus, this instant complaint is materially defective and therefore should be dismissed. *See* Scheeler, supra.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian has established in his request for reconsideration of the Council's May 28, 2013 Interim Order that 1) the GRC's decision is based upon a "palpably incorrect ... basis" and 2) it is obvious that the GRC did not consider the significance of probative, competent evidence; to wit, the GRC did not consider the Custodian's SOI submission when rendering its decision. Thus, the Custodian's request for reconsideration is granted. 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).
2. The Council rescinds paragraphs 1-4 of its May 28, 2013 Interim Order and finds that the Complainant's cause of action was not ripe at the time of the filing of this Denial of Access Complaint; to wit, the Custodian provided a response to the OPRA request within the statutorily mandated seven (7) business days and properly sought a two-week extension of time to respond to said request. Further, the extension was reasonable based on the volume of the request and the fact that the records responsive were in storage. Also, the Council notes that the Custodian has already provided the requested records to the Complainant. Thus, this instant complaint is materially defective and therefore should be dismissed. See Scheeler v. Township of Galloway (Atlantic), GRC Complaint No. 2012-151 (Interim Order dated May 28, 2013).

Prepared By: Dara L. Barry
Communications Manager

Approved By: Brandon D. Minde, Esq.
Executive Director

June 18, 2013



State of New Jersey
GOVERNMENT RECORDS COUNCIL

101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

INTERIM ORDER

May 28, 2013 Government Records Council Meeting

Michael Lamanteer
Complainant

Complaint No. 2012-198

v.

County of Gloucester
Custodian of Record

At the May 28, 2013 public meeting, the Government Records Council ("Council") considered the May 21, 2013 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 Custodian failed to bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. The Custodian failed to respond to the Complainant's OPRA request. Further, the Custodian failed to respond to the GRC's request for the SOI. Thus, the Custodian failed to bear his burden of proving a lawful basis for a denial of access to the requested records. N.J.S.A. 47:1A-6. As such, the Custodian must disclose the requested records to the Complainant.
3. **The Custodian shall comply with item #2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,¹ to the Executive Director.²**

¹ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

² Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the
Government Records Council
On The 28th Day of May, 2013

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: June 3, 2013

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
May 28, 2013 Council Meeting**

**Michael Lamanteer¹
Complainant**

GRC Complaint No. 2012-198

v.

**County of Gloucester²
Custodian of Records**

Records Relevant to Complaint: Tax assessment for land improvement for years 1975 through 2009 for Block No. 42 Lot No. 3.

Request Made: June 6, 2012

Response Made: None

GRC Complaint Filed: June 28, 2012³

Background⁴

Request and Response:

On June 6, 2012, the Complainant submitted an Open Public Records Act (“OPRA”) request seeking the above-listed records. The Custodian did not respond to the Complainant’s OPRA request.

Denial of Access Complaint:

On June 28, 2012, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant states on June 19, 2012, he contacted the Custodian regarding his OPRA request and the Custodian informed him that he would receive the requested records by June 21, 2012. The Complainant also states that on June 25, 2012, he received a phone call from the Custodian stating that he would receive the requested records by June 27, 2012. The Complainant asserts that he still has not received the records responsive to his request.

¹ No legal representation listed on record.

² Robert N. DiLella, Custodian of Records. No legal representation listed on record.

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

⁴ The parties may have submitted additional correspondence, or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

Statement of Information:

On September 24, 2012, the GRC sent the Custodian a request for a Statement of Information (“SOI”). The Custodian failed to submit the required SOI.

Analysis⁵

Timeliness

OPRA mandates that a custodian must either grant or deny access to requested records within seven (7) business days from receipt of said request. N.J.S.A. 47:1A-5(i). A custodian’s failure to respond within the required seven (7) business days results in a “deemed” denial. *Id.* Further, a custodian’s response, either granting or denying access, must be in writing pursuant to N.J.S.A. 47:1A-5(g).⁶ Thus, a custodian’s failure to respond in writing to a complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

The Complainant filed his OPRA request on June 6, 2012. The Complainant asserted in his Denial of Access Complaint that the Custodian informed him that he would receive the responsive records by June 21, 2012. The Complainant also asserted that the Custodian telephoned him on June 25, 2012 stating that he would have the responsive records by June 27, 2012. The Custodian failed to respond to the Complainant’s OPRA request.

Therefore, the Custodian failed to bear his burden of proof that he timely responded to the Complainant’s OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian’s failure to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a “deemed” denial of the Complainant’s OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley, supra.

Unlawful Denial of Access

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

⁵ There may be other OPRA issues in this matter; however, the Council’s analysis is based solely on the claims made in the Complainant’s Denial of Access Complaint.

⁶ It is the GRC’s position that a custodian’s written response either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, even if said response is not on the agency’s official OPRA request form, is a valid response pursuant to OPRA.

The Custodian failed to respond to the Complainant's OPRA request. Further, the Custodian failed to respond to the GRC's request for the SOI. Thus, the Custodian failed to bear his burden of proving a lawful basis for a denial of access to the requested records. N.J.S.A. 47:1A-6. As such, the Custodian must disclose the requested records to the Complainant.

Knowing & Willful

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that:

1. The Custodian failed to bear his burden of proof that he timely responded to the Complainant's OPRA request. N.J.S.A. 47:1A-6. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request pursuant to N.J.S.A. 47:1A-5(g), N.J.S.A. 47:1A-5(i), and Kelley v. Township of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).
2. The Custodian failed to respond to the Complainant's OPRA request. Further, the Custodian failed to respond to the GRC's request for the SOI. Thus, the Custodian failed to bear his burden of proving a lawful basis for a denial of access to the requested records. N.J.S.A. 47:1A-6. As such, the Custodian must disclose the requested records to the Complainant.
3. **The Custodian shall comply with item #2 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4,⁷ to the Executive Director.⁸**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

⁷ "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

⁸ Satisfactory compliance requires that the Custodian deliver the record(s) to the Complainant in the requested medium. If a copying or special service charge was incurred by the Complainant, the Custodian must certify that the record has been *made available* to the Complainant but the Custodian may withhold delivery of the record until the financial obligation is satisfied. Any such charge must adhere to the provisions of N.J.S.A. 47:1A-5.

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

Approved By: Brandon D. Minde, Esq.
Executive Director

May 21, 2013