



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

PHILIP D. MURPHY
Governor

LT. GOVERNOR SHEILA Y. OLIVER
Commissioner

FINAL DECISION

June 28, 2022 Government Records Council Meeting

Brian F. McBride
Complainant

Complaint No. 2020-206

v.

Township of Washington (Gloucester)
Custodian of Record

At the June 28, 2022 public meeting, the Government Records Council (“Council”) considered the June 21, 2022 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 the Complainant has failed to establish in his request for reconsideration of the Council’s April 26, 2022 Final Decision that either 1) the Council’s decision is based upon a “palpably incorrect or irrational basis;” or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant failed to establish that the complaint should be reconsidered based on mistake, fraud, and illegality. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Complainant failed to refute the GRC’s finding that he verified his complaint prior to the extended deadline’s expiration. Thus, the Complainant request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D’Atria v. D’Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

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 28th Day of June 2022

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 30, 2022

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

Reconsideration
Supplemental Findings and Recommendations of the Executive Director
June 28, 2022 Council Meeting

Brian F. McBride¹
Complainant

GRC Complaint No. 2020-206

v.

Township of Washington (Gloucester)²
Custodial Agency

Records Relevant to Complaint: Electronic copies via e-mail of:³

1. Invoices for all drug tests performed for newly hired employees in the Township of Washington (“Township”) from October 2016 through present.
2. Records identifying each new employee hired since October 2016; records which identify the name of the employee, position, and start date.

Custodian of Record: Christine Ciallella
Request Received by Custodian: September 10, 2020
Response Made by Custodian: September 10, 2020
GRC Complaint Received: October 6, 2020

Background

April 26, 2022 Council Meeting:

At its April 26, 2022 public meeting, the Council considered the April 19, 2022 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:

[T]his complaint is materially defective and shall be dismissed because the Complainant verified his complaint before the statutory time period for the Custodian to respond, *as extended*, had expired. See Sallie v. N.J. Dep’t of Banking and Ins., GRC Complaint No. 2007-226 (April 2009) and Hardwick v. N.J. Dep’t of Transp., GRC Complaint No. 2011-52 (August 2012). See also Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 2013).

¹ No legal representation listed on record.

² Represented by Patrick J. Madden, Esq. of Law Offices of Patrick J. Madden, L.L.C. (Haddonfield, NJ). Previously represented by Carmen Saginario, Jr., Esq. of Capehart & Scatchard, P.A. (Mount Laurel, NJ).

³ The Complainant sought additional records not at issue in this complaint.

Procedural History:

On April 27, 2022, the Council distributed its Final Decision to all parties. On May 11, 2022, the Complainant filed a request for reconsideration of the Council's April 26, 2022 Final Decision based on a mistake, fraud, and illegality.

The Complainant asserted that under OPRA, invoices are ordinarily supposed to be made immediately available to the public upon request, and no exceptions are made for invoices for pre-employment drug screening. The Complainant further argued that the Custodian failed to respond to the request for nearly two (2) years, and requested the GRC look to its previous decisions in Ciccarone v. N.J. Dep't of Treas., GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014), Rodriguez v. Kean Univ., GRC Complaint No. 2015-114 (April 2016), and Rodriguez v. Kean Univ., GRC Complaint No. 2016-196 (February 2018).

The Complainant also noted that after the GRC issued its decision, the Township of Washington ("Township") terminated the employment of its Business Administrator. The Complainant claimed that the employee told a citizen that many of the extensions for OPRA requests were not made for a legitimate purpose. The employee also allegedly stated that the Township did not follow its pre-employment drug testing policy, and therefore the certifications provided by the Township could be perjurious.

On May 25, 2022, the Custodian submitted objections to the request for reconsideration. The Custodian asserted that the Council's decision was based upon the finding that the Complainant verified his complaint before the extended statutory period ended, rendering the complaint materially defective. The Custodian asserted that nothing in the Complainant's request for reconsideration changes the conclusion, and therefore should be denied by the Council.

On May 25, 2022, the Complainant replied to the Custodian's objections. The Complainant asserted that the requested invoices were supposed to be made available immediately and taking nearly two (2) years was unreasonable and not taken into consideration by the Council. The Complainant also noted that the request still remains open and incomplete as of that date.

Analysis

Reconsideration

Pursuant to N.J.A.C. 5:105-2.10, parties may file a request for a reconsideration of any decision rendered by the Council within ten (10) business days following receipt of a Council decision. Requests must be in writing, delivered to the Council and served on all parties. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council will provide all parties with written notification of its determination regarding the request for reconsideration. N.J.A.C. 5:105-2.10(a) – (e).

In the matter before the Council, the Complainant filed the request for reconsideration of the Council's Order dated April 26, 2022 on May 11, 2022, ten (10) days from the issuance of the Council's Order.

Applicable case law holds that:

“A party should not seek reconsideration merely based upon dissatisfaction with a decision.” D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Rather, reconsideration is reserved for those cases where (1) the decision is based upon a “palpably incorrect or irrational basis;” or (2) it is obvious that the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. *E.g.*, Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996). The moving party must show that the court acted in an arbitrary, capricious or unreasonable manner. D'Atria, . . . 242 N.J. Super. at 401. “Although it is an overstatement to say that a decision is not arbitrary, capricious, or unreasonable whenever a court can review the reasons stated for the decision without a loud guffaw or involuntary gasp, it is not much of an overstatement.” Ibid.

[In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).]

Here, the Complainant submitted an OPRA request on September 10, 2020, and received a response immediately from the Custodian, requesting an extension of time until October 9, 2020. The Complainant thereafter filed the instant complaint on October 6, 2020, three (3) days before the end of the extended period. The Council held that the Custodian properly notified the Complainant of the extension needed to fulfill the request and dismissed the matter as unripe for adjudication.

Upon review of the filings, the Complainant’s request for reconsideration should be denied. The Complainant first emphasized that the OPRA request sought “immediate access” records and therefore should have been provided to the Complainant immediately. However, the GRC noted that in Hardwick v. N.J. Dep’t of Transp., GRC Complaint No. 2011-52 (August 2012), extensions of time to respond to a request for immediate access records are permitted so long as the custodian immediately notifies the complainant of same. In the current matter, the Custodian notified the extension of time on the same date of receipt, and the GRC therefore found the extension timely, in accordance with Hardwick.

Moreover, while the bulk of the Complainant’s additional arguments revolve around the reasonableness of the extensions, said arguments centered upon the Complainant’s dissatisfaction of the Custodian’s response to the request leading to the claim that the request remains unresolved and unanswered. However, the issue before the GRC was to address the reasonableness of the initial request for an extension. The GRC noted that at the time of the request, the Township was dealing with the limited staffing and resources due to the COVID-19 pandemic. Combined with the scope of the request, the GRC held that the thirteen (13) business day extension was reasonable, and that the Complainant’s filing was therefore unripe for adjudication. The Complainant’s arguments fail to address whether the GRC’s decision on the reasonableness of the initial extension was based upon mistake, fraud, and illegality.

As the moving party, the Complainant was required to establish either of the necessary criteria set forth above: either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. See Cummings, 295 N.J. Super. at 384. The Complainant failed to establish that the complaint should be reconsidered based on mistake, fraud, and illegality. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. See D'Atria, 242 N.J. Super. at 401. Specifically, the Complainant failed to refute the GRC's finding that he verified his complaint prior to the extended deadline's expiration. Thus, the Complainant's request for reconsideration should be denied. Cummings, 295 N.J. Super. at 384; D'Atria, 242 N.J. Super. at 401; Comcast, 2003 N.J. PUC at 5-6.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the Complainant has failed to establish in his request for reconsideration of the Council's April 26, 2022 Final Decision that either 1) the Council's decision is based upon a "palpably incorrect or irrational basis;" or 2) it is obvious that the Council did not consider the significance of probative, competent evidence. The Complainant failed to establish that the complaint should be reconsidered based on mistake, fraud, and illegality. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically, the Complainant failed to refute the GRC's finding that he verified his complaint prior to the extended deadline's expiration. Thus, the Complainant request for reconsideration should be denied. Cummings v. Bahr, 295 N.J. Super. 374 (App. Div. 1996); D'Atria v. D'Atria, 242 N.J. Super. 392 (Ch. Div. 1990); In The Matter Of The Petition Of Comcast Cablevision Of S. Jersey, Inc. For A Renewal Certificate Of Approval To Continue To Construct, Operate And Maintain A Cable Tel. Sys. In The City Of Atl. City, Cnty. Of Atl., State Of N.J., 2003 N.J. PUC LEXIS 438, 5-6 (N.J. PUC 2003).

Prepared By: Samuel A. Rosado
Staff Attorney

June 21, 2022



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PHILIP D. MURPHY
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LT. GOVERNOR SHEILA Y. OLIVER
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FINAL DECISION

April 26, 2022 Government Records Council Meeting

Brian F. McBride
Complainant

Complaint No. 2020-206

v.

Township of Washington (Gloucester)
Custodian of Record

At the April 26, 2022 public meeting, the Government Records Council (“Council”) considered the April 19, 2022 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 this complaint is materially defective and shall be dismissed because the Complainant verified his complaint before the statutory time period for the Custodian to respond, *as extended*, had expired. See Sallie v. N.J. Dep’t of Banking and Ins., GRC Complaint No. 2007-226 (April 2009) and Hardwick v. N.J. Dep’t of Transp., GRC Complaint No. 2011-52 (August 2012). See also Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 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 26th Day of April 2022

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: April 28, 2022



**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
April 26, 2022 Council Meeting**

**Brian F. McBride¹
Complainant**

GRC Complaint No. 2020-206

v.

**Township of Washington (Gloucester)²
Custodial Agency**

Records Relevant to Complaint: Electronic copies via e-mail of:³

1. Invoices for all drug tests performed for newly hired employees in the Township of Washington (“Township”) from October 2016 through present.
2. Records identifying each new employee hired since October 2016; records which identify the name of the employee, position, and start date.

Custodian of Record: Christine Ciallella
Request Received by Custodian: September 10, 2020
Response Made by Custodian: September 10, 2020
GRC Complaint Received: October 6, 2020

Background⁴

Request and Response:

On September 10, 2020, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. That same day, the Custodian responded to the Complainant in writing stating that all OPRA requests required an extension to October 9, 2020. Both the request and response were delivered to the parties after business hours, at approximately 8:54PM.

Denial of Access Complaint:

On October 6, 2020, the Complainant filed a Denial of Access Complaint with the

¹ No legal representation listed on record.

² Represented by Patrick J. Madden, Esq. of Law Offices of Patrick J. Madden, L.L.C. (Haddonfield, NJ). Previously represented by Carmen Saginario, Jr., Esq. of Capehart & Scatchard, P.A. (Mount Laurel, NJ).

³ The Complainant sought additional records not at issue in this complaint.

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.

Government Records Council (“GRC”). The Complainant asserted that he never received a response from the Custodian regarding his request. The Complainant also asserted that the Custodian failed to provide any “reasonable efforts” that were necessary to procure the records or articulate any basis for the extension.

Supplemental Response:

On October 21, 2020, the Custodian responded to the Complainant in writing providing records responsive to item Nos. 1 & 2. The Custodian also stated that records responsive to item No. 1 were redacted to protect personnel information.

Later than same day, the Complainant responded to the Custodian via e-mail. The Complainant asserted that the provided invoices were billed solely with the public works department, and therefore contended there were missing invoices for the mayor, council persons, crossing guards, and the business administrator.

On October 22, 2020, the Custodian responded to the Complainant in writing, stating that the assumption that the invoices only pertained to drug screenings for public works employees was incorrect. The Custodian stated that the redacted names within the invoices encompassed employees for every department in the Township. The Complainant responded that same day, maintaining that there should be documentation showing the cost transfer from the public works department to the tested employee’s department, and requested same. The Complainant also argued that the records production was incomplete, as only twenty-six (26) invoices were provided in conjunction with 146 employees hired since 2016.

On October 23, 2020, the Complainant e-mailed the GRC, raising an ethical issue with the Custodian’s previous representation, Capehart & Scatchard, P.A. (“the Firm”) and the Township. The Complainant asserted that the Firm donated money to the campaigns of the Township’s Mayor and Council President.

Statement of Information:

On October 27, 2020, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on September 10, 2020. The Custodian certified that she responded in writing that same day, stating that an extension of time was needed until October 9, 2020. The Custodian certified that she immediately reviewed the compiled records and determined that redactions of personnel information was necessary. The Custodian certified that she provided the records to the Complainant on October 21, 2020.

The Custodian asserted that the September 10, 2020 response contradicts the Complainant’s claim that no response was provided to his request. The Custodian further asserted that the Complainant’s Denial of Access Complaint was prematurely filed on October 5, 2020, since the Custodian provided a date certain of October 9, 2020. The Custodian also argued that given the external circumstances under COVID, providing the records on October 21, 2020 was “palpably reasonable.”

The Custodian also asserted that the provided records were complete, contending that each of the twenty-six (26) invoices related to drug screens reflected screenings for multiple employees and not just one employee per invoice. The Custodian contended that the Complainant refused to withdraw the matter despite being advised of this information.

Additional Submissions:

On October 27, 2020,⁵ the Complainant submitted a response to the Custodian's SOI. The Complainant asserted that the provided invoices only show a quantity of "one unit" billed per invoice. The Complainant therefore maintained that the production of invoices was incomplete.

On October 30, 2020, the Complainant submitted another response to the GRC, stating that he did not receive the requested records, asserting that he received purchase orders and not invoices.

On January 20, 2021, the Complainant e-mailed the GRC requesting a criminal investigation into the Custodian. On January 21, 2021, the Complainant e-mailed the GRC, attaching a copy of a text message which the Complainant states is between a former Councilwoman and the Township's Business Administrator. The Complainant stated that the text message shows the Business Administrator stating that he would direct a previous records custodian to deny previous requests from the Complainant pertaining to pre-employment drug testing.

Analysis

Unripe Cause of Action

Unless a shorter time period is otherwise provided, a custodian must 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. Twp. of Rockaway, GRC Complaint No. 2007-11 (Interim Order October 31, 2007).

In Sallie v. N.J. Dep't of Banking and Ins., GRC Complaint No. 2007-226 (April 2009), the complainant forwarded a complaint to the GRC asserting that he had not received a response from the custodian and by the time the GRC received his complaint seven business days would

⁵ The Complainant also raised an objection to representation of the Custodian's previous firm but has since rescinded his objection with the introduction of Custodian's current representation.

⁶ 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.

have passed. The Council held that “. . . the Complainant’s cause of action was not ripe at the time he verified his Denial of Access Complaint.” The Council reasoned that because the complainant filed the complaint before the statutorily mandated seven business day period had expired, the custodian had not yet denied the complainant access to a government record. As such, the Council dismissed the complaint.

The Council has applied the same analysis to a valid extension of time. In Hardwick v. N.J. Dep’t of Transp., GRC Complaint No. 2011-52 (August 2012), the custodian within the statutorily mandated seven business day period requested a valid extension of time. Thereafter, the complainant filed a Denial of Access Complaint within the extended period. The Council held that because the complainant filed his complaint with the GRC prior to expiration of the custodian’s extension of time, and as of the date the complaint was filed the custodian had not denied access to any responsive records, the complaint was unripe for adjudication and must be dismissed.

Likewise, barring extenuating circumstances, a custodian’s failure to respond immediately in writing to a complainant’s OPRA request for immediate access records, either granting access, denying access, seeking clarification, or requesting an extension of time, also results in a “deemed” denial of the request pursuant to N.J.S.A. 47:1A-5(e), N.J.S.A. 47:1A-5(g), and N.J.S.A. 47:1A-5(i).⁷ See Cody v. Middletown Twp. Public Schools, GRC Complaint No. 2005-98 (December 2005) and Harris v. NJ Dep’t of Corr., GRC Complaint No. 2011-65 (August 2012). See also Herron v. Twp. of Montclair, GRC Complaint No. 2006-178 (February 2007), holding that the custodian was obligated to immediately notify the complainant as to the status of immediate access records.

Here, the Complainant submitted his OPRA request on September 10, 2020. The Custodian certified, and the evidence of record demonstrates, that the Complainant received a written response immediately, stating that an extension until October 9, 2020 was needed to fulfill the request. Given that the OPRA request was submitted on after work hours, the statutory seven (7) business day period began on September 11, 2020, and the original deadline would have been September 21, 2020. Thus, the Custodian extended the deadline by thirteen (13) business days. Given that the request sought records and information over a four (4) year period, and the existing limited staffing and resources due to the pandemic, it was reasonable for the Custodian to seek an extension until October 9, 2020.

N.J.S.A. 47:1A-6 provides that “[a] person who is denied access to a government record by the custodian of the record . . . may institute a proceeding to challenge the custodian’s decision by filing . . . a complaint with the Government Records Council . . .” For such a complaint to be ripe, however, the complainant must have been denied access to a government record. In the instant complaint, however, the Complainant verified his complaint on October 6, 2020, which was within the extended period, and therefore before he was denied access to any of the records responsive to his request. Thus, the Complainant here acted in a similar manner as the complainants in Sallie, GRC 2007-226 and Hardwick, GRC 2011-52, by filing a Denial of Access Complaint with the

⁷ OPRA lists immediate access records as “budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information.” N.J.S.A. 47:1A-5(e). The Council has also determined that purchase orders and invoices are immediate access records. See Kohn v. Twp. of Livingston (Essex), GRC Complaint No. 2012-03 (April 2013).

GRC prior to expiration of the valid time period for the Custodian to respond, and therefore prior to any denial of access to the requested records. Furthermore, although the Complainant's request sought immediate access records, the Custodian responded to the Complainant immediately with the extension date. As such, the complaint is not ripe for adjudication.

Accordingly, this complaint is materially defective and shall be dismissed because the Complainant verified his complaint before the statutory time period for the Custodian to respond, *as extended*, had expired. See Sallie, GRC 2007-226 and Hardwick, GRC 2011-52. See also Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 2013).

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that this complaint is materially defective and shall be dismissed because the Complainant verified his complaint before the statutory time period for the Custodian to respond, *as extended*, had expired. See Sallie v. N.J. Dep't of Banking and Ins., GRC Complaint No. 2007-226 (April 2009) and Hardwick v. N.J. Dep't of Transp., GRC Complaint No. 2011-52 (August 2012). See also Inzelbuch v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2012-323 (February 2013).

Prepared By: Samuel A. Rosado
Staff Attorney

April 19, 2022