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cc: Admin  
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State of New Jersey  
GOVERNMENT RECORDS COUNCIL  
101 SOUTH BROAD STREET  
PO Box 819  
TRENTON, NJ 08625-0819

CHRIS CHRISTIE  
Governor  
KIM GUADAGNOLI  
Lt. Governor

RICHARD E. CONSTABLE,  
Commissioner

November 21, 2013

RE: Thomas Caggiano v. Township of Mt. Olive (Morris),  
GRC Complaint No. 2012-250

To All Parties:

Please find attached the Final Decision of the Government Records Council ("Council") and the Findings & Recommendations of the Executive Director in the above-referenced case(s).

This is the final administrative determination. Any further review should be pursued in the Appellate Division of the Superior Court of New Jersey within forty-five (45) days. Pursuant to New Jersey Court Rule 2:9-7, after filing a notice of appeal from this decision with the Appellate Division, a request for a stay of the decision must be made to the GRC. If the Council denies such request, a motion to stay the Council's decision must be made to the Appellate Division.

Requests for a stay of a final decision must be in writing, delivered to the Council and contemporaneously served upon all parties of the complaint (with a copy of such notice of appeal) pursuant to *N.J.A.C. 5:105-2.12*. Parties must file any objection to a request for a stay within ten (10) business days following receipt of the request. The Executive Director may grant a stay based on consideration of the request and any objection to the request submitted to the Council. A request for a stay must include a detailed analysis of the issues, which must include the requestor's positions with regard to the following factors that the Council will include in its decision-making process:

1. The clear likelihood of success on appeal on the merits of the claim;
2. The danger of irreparable harm if the stay is not granted;
3. The absence of substantial injury to other parties if the stay is granted; and
4. The public interest.

Requests for reconsideration must be completed on the appropriate form, delivered to the Council within ten (10) business days following receipt of a Council decision and contemporaneously served upon all parties of the complaint pursuant to *N.J.A.C. 5:105-2.10*. Parties must file any objection to the request for reconsideration within ten (10) business days following receipt of the request. The Council, at its own discretion, may reconsider any decision it renders. The request for reconsideration form is located on the GRC website at



[www.nj.gov/grc](http://www.nj.gov/grc) (under "Forms" at the bottom right of the homepage) or may be obtained by contacting the GRC directly at 609-292-6830.

Please contact your assigned Case manager if you have any questions.

Sincerely,

*Brandon D. Minde*

Brandon D. Minde, Esq.  
Executive Director

Enclosures

Parties of the Complaint:

Thomas Caggiano, Complainant, via E-mail and Regular Mail

Lisa M. Lashway, Custodian, via E-mail and Regular Mail

Michael A. Augello, Jr., Esq., Counsel to Custodian, via E-mail and Regular Mail



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FINAL DECISION

November 19, 2013 Government Records Council Meeting

Thomas Caggiano  
Complainant

Complaint No. 2012-250

v.

Township of Mt. Olive (Morris)  
Custodian of Record

At the November 19, 2013 public meeting, the Government Records Council ("Council") considered the November 12, 2013 Supplemental Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council, by majority vote, adopted 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 August 27, 2013 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 extraordinary circumstances or fraud. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically and notwithstanding the disputed timeliness of his filing, the Complainant reasserts his Denial of Access Complaint argument and does not address the Council's conclusion that his request is invalid. Thus, the Complainant's 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 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 19th Day of November, 2013



Robin Berg Tabakin, Esq., Chair  
Government Records Council

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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: November 21, 2013**

STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL

*Reconsideration*  
Supplemental Findings and Recommendations of the Executive Director  
November 19, 2013 Council Meeting

Thomas Caggiano<sup>1</sup>  
Complainant

GRC Complaint No. 2012-250

v.

Township of Mt. Olive (Morris)<sup>2</sup>  
Custodial Agency

**Records Relevant to Complaint:**<sup>3</sup> Electronic copies via e-mail of all papers filed to the Municipal Prosecutor in Netcong Municipal Court "... by the Prosecutor ..." and the complaints the Complainant filed in Netcong Municipal Court and letters from Judge Paparazoo, J.M.C., to Judge Zinna, J.M.C.

**Custodian of Record:** Lisa M. Lashway  
**Request Received by Custodian:** December 5, 2011  
**Response Made by Custodian:** December 8, 2011  
**GRC Complaint Received:** August 27, 2012

**Background**

August 27, 2013 Council Meeting:

At its August 27, 2013 public meeting, the Council considered the August 20, 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:

[T]he Complainant's request is invalid because it failed to provide ample identifiers necessary for the Custodian to locate any responsive records. MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005),<sup>4</sup> New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

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

<sup>2</sup> Represented by Michael A. Augello, Esq. (Boonton, NJ).

<sup>3</sup> The Complainant requested additional records that are not at issue in this complaint.

<sup>4</sup> Affirmed on appeal regarding Bent v. Stafford Police Department, GRC Case No. 2004-78 (October 2004).

### Procedural History:

On August 29, 2013, the Council distributed its Final Decision to all parties. On September 24, 2013, the Complainant filed a request for reconsideration of the Council's August 27, 2013 Interim Order based on extraordinary circumstances and fraud. The Complainant contended that he was on vacation and received the Council's Final Decision upon his return. The Complainant contended that municipal prosecutor records are not court records and must be maintained by a municipality.

### 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 his request for reconsideration of the Council's August 27, 2013 Final Decision on September 24, 2013, seventeen (17) business days from the issuance of the Council's Order, contending that he did not receive the decision until he returned from vacation. However, the Complainant did not provide an exact date and thus the GRC cannot determine whether this filing was timely.

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).

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 extraordinary circumstances or fraud. 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 and notwithstanding the disputed timeliness of his filing, the Complainant reasserts his Denial of Access Complaint argument and does not address the Council's conclusion that his request is invalid. 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 August 27, 2013 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 extraordinary circumstances or fraud. The Complainant has also failed to show that the Council acted arbitrarily, capriciously or unreasonably. Specifically and notwithstanding the disputed timeliness of his filing, the Complainant reasserts his Denial of Access Complaint argument and does not address the Council's conclusion that his request is invalid. Thus, the Complainant's 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 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: Frank F. Caruso  
Senior Case Manager

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

November 12, 2013

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