



State of New Jersey

GOVERNMENT RECORDS COUNCIL

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VINCENT P. MALTESE, Chairman
ACTING COMMISSIONER JOSEPH V. DORIA, JR.
COMMISSIONER LUCILLE DAVY
ROBIN BERG TABAKIN
DAVID FLEISHER
CATHERINE STARGHILL Esq., Executive Director

INTERIM ORDER

December 19, 2007 Government Records Council Meeting

Thomas Caggiano	Complaint No. 2006-211, 2006-219, 2007-24,
Complainant	2007-25, 2007-26, 2007-40, 2007-43, 2007-44,
v.	2007-45, 2007-46, 2007-47, 2007-183, 2007-184,
Borough of Stanhope (Sussex)	2007-228, 2007-229, & 2007-285
Custodian of Record	

At the December 19, 2007 public meeting, the Government Records Council ("Council") considered the December 12, 2007 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 as amended. The Council, therefore, finds that the request for a stay of the November 28, 2007 Interim Orders referring sixteen (16) complaints to the Office of Administrative Law not be granted since the complaints were referred to the Office of Administrative Law due to a conflict of interest between Complainant and Executive Director Starghill based on the criminal harassment complaint filed and the temporary restraining order obtained for the GRC against Complainant.

Interim Order Rendered by the
Government Records Council
On The 19th Day of December, 2007

Robin Berg Tabakin, Vice Chairman
Government Records Council

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

David Fleisher, Secretary
Government Records Council

Decision Distribution Date: December 27, 2007



STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL
Regarding Custodian Counsel's Motion for a Stay
Supplemental Findings and Recommendations of the Executive Director
December 19, 2007 Council Meeting

Thomas Caggiano¹
Complainant

v.

GRC Complaint Nos. 2006-211, 2006-219, 2007-24, 2007-25, 2007-26, 2007-40, 2007-43, 2007-44, 2007-45, 2007-46, 2007-47, 2007-183, 2007-184, 2007-228, 2007-229 & 2007-285

Borough of Stanhope (Sussex)²
Custodian of Records

Records Relevant to Complaint: Various.

Request Made: Various.

Response Made: Various.

Custodian: Various.

GRC Complaint Filed: Various.

Background

November 28, 2007

Government Records Council's ("Council") Interim Orders. At its November 28, 2007 public meeting, the Council considered the November 21, 2007 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 in all instances that because of a conflict of interest and at the request of the Complainant, these matters be referred to the Office of Administrative Law ("OAL") for a hearing to resolve the facts and determine whether the Custodian unlawfully denied access to the requested records, and if so, whether the Custodian knowingly and willfully violated the Open Public Records Act ("OPRA") and unreasonable denied access under the totality of the circumstances.

November 29, 2007

Council's Interim Orders distributed to the parties.

December 3, 2007

Council's Interim Orders and supporting complaint file documents transmitted to the OAL.

December 6, 2007

Custodian's Request for Stay of the Council's Interim Orders. The Custodian's Counsel asserts that the GRC does not understand the ramification of its decision to send

¹ No legal representative listed in the file.

² Represented by Richard Stein of Laddey, Clark & Ryan, LLP (Sparta, NJ).

all sixteen (16) Denial of Access Complaints to the OAL. Specifically, the Custodian's Counsel states that by entering the orders it has (referring the complaints to the OAL due to a conflict of interest between Complainant and Executive Director Starghill based on the criminal harassment complaint filed and the temporary restraining order obtained for the GRC against Complainant), the GRC has caved into the harassment and intimidation of the Complainant and that Complainant should not be allowed to benefit by his own behavior but instead should be punished criminally for this behavior.

The Custodian's Counsel also states that by referring the sixteen (16) complaints to the OAL, the Borough of Stanhope will have to engage in the full administrative hearing procedure on each of the complaints with the strong likelihood that the Administrative Law Judge will recommend to the GRC that such complaints are frivolous and made in bad faith solely for the purpose of harassment which the GRC will still have to rule on by accepting the decision of the Administrative Law Judge.

Additionally, the Custodian's Counsel states that the public interest and the injury to the public was not considered by the GRC because the Borough of Stanhope must be represented by legal counsel in hearings before OAL requiring pretrial preparation, as well as trips to the OAL in Newark at an estimated cost of \$3,000 per complaint or over \$50,000 versus no legal counsel required before the GRC.

Further, the Custodian's Counsel states that there is no harm to any party by the GRC continuing to process the complaints in the usual administrative manner since the GRC members and staff are now protected by a restraining order and should be able to function normally in the administrative determination of these matters. The Custodian's Counsel asserts that the GRC should not blithely abrogate its duties under OPRA because of a harassment complaint.

Lastly, the Custodian's Counsel asserts that the Complainant will continue to file Denial of Access Complaints with the GRC which the GRC will refer to the OAL, thus resulting in enormous legal expenses to the Borough of Stanhope. The Custodian's Counsel states that the Borough of Stanhope has decided to seek judicial relief in Superior Court against the Complainant and will file a Complaint with an Order to Show Cause within the next ten (10) days. Therefore, the Custodian requests a stay of all proceedings and schedule these matters for a reconsideration pending the Borough's Superior Court action against the Complainant.

Analysis

Whether the GRC should grant a stay of the November 28, 2007 Interim Orders referring sixteen (16) complaints to the Office of Administrative Law?

The Custodian requests a stay of the November 28, 2007 Interim Orders of the Government Records Council and asserts the following justification for such stay:

Likelihood of Success on the Merits

The Custodian's Counsel states that the Borough of Stanhope has decided to seek judicial relief in Superior Court of New Jersey against the Complainant and will file a Complaint with an Order to Show Cause within the next ten (10) days. The Custodian's Counsel does not make any assertions regarding the likelihood of success on the merits of this action before Superior Court.

Danger of Irreparable Harm

The Custodian's Counsel asserts that the irreparable harm from the GRC not granting a stay of the referral of the sixteen (16) complaints to the OAL is that the Borough of Stanhope must be represented by legal counsel in hearings before OAL requiring pretrial preparation, as well as trips to the OAL in Newark at an estimated cost of \$3,000 per complaint or over \$50,000 versus no legal counsel required before the GRC.

Potential Chilling Effect

The Custodian's Counsel further asserts that the Complainant will continue to file Denial of Access Complaints with the GRC which the GRC will refer to the OAL, thus resulting in enormous legal expenses to the Borough of Stanhope. Additionally, the Custodian's Counsel asserts that by entering the orders it has (referring the complaints to the OAL due to a conflict of interest between Complainant and Executive Director Starghill based on the criminal harassment complaint filed and the temporary restraining order obtained for the GRC against Complainant), the GRC has caved into the harassment and intimidation of the Complainant and that Complainant should not be allowed to benefit by his own behavior but instead should be punished criminally for this behavior.

The arguments made by the Custodian's Counsel are not enough to overcome the harm that may be done by the Executive Director and the entire GRC staff and members continuing with the agency adjudication of complaints filed by a Complainant against whom the Executive Director has a filed a criminal harassment complaint and obtained an agency temporary restraining order. These facts present an obvious perception of a conflict of interest which will only minimally be affected by the GRC's acceptance of the initial decisions rendered by an Administrative Law Judge hearing these complaints at OAL.

Additionally, the Complainant specifically requested that all his open complaints be forwarded to the OAL for adjudication due to the perceived conflict of interest. This request alone and acknowledgement by the Complainant of a conflict of interest is, in and of itself, enough to justify the GRC's referral of these matters to the OAL. The GRC's adjudication of these complaints may be viewed as an impingement upon the Complainant's due process right. Also, the Custodian's Counsel should note that the vast majority of litigates before the OAL are pro se. Therefore, while the Borough's anticipated legal expense to defend the Custodian at the OAL may be extensive, it is not a requirement of the proceedings. Lastly, the harassing behavior of the Complainant toward GRC staff tips the balancing scales in the decision to refer these complaints to the OAL. Contrary to the Custodian's Counsel argument that the GRC should not allow the

Complainant to benefit from his own harassing behavior toward GRC Staff, the GRC does not view referring these complaints as a “benefit” to the Complainant but rather an executive branch administrative procedure allowed per the provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

For these reasons mentioned above, the Custodian’s request for a stay should not be granted.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that the request for a stay of the November 28, 2007 Interim Orders referring sixteen (16) complaints to the Office of Administrative Law not be granted since the complaints were referred to the Office of Administrative Law due to a conflict of interest between Complainant and Executive Director Starghill based on the criminal harassment complaint filed and the temporary restraining order obtained for the GRC against Complainant.

Approved By:

Catherine Starghill, Esq.
Executive Director

December 18, 2007



State of New Jersey

GOVERNMENT RECORDS COUNCIL

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CATHERINE STARGHILL Esq., Executive Director

INTERIM ORDER

November 28, 2007 Government Records Council Meeting

Thomas Caggiano
Complainant

Complaint No. 2007-47

v.

Borough of Stanhope (Sussex)
Custodian of Record

At the November 28, 2007 public meeting, the Government Records Council ("Council") considered the November 21, 2007 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 of a conflict of interest and at the request of the Complainant, this matter be referred to the Office of Administrative Law for a hearing to resolve the facts and determine whether the custodian unlawfully denied access to the requested records, and if so, whether the denial was knowing and willful in violation of OPRA and unreasonable under the totality of the circumstances.

Interim Order Rendered by the
Government Records Council
On The 28th Day of November, 2007

Vincent P. Maltese, Chairman
Government Records Council

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

Government Records Council



Decision Distribution Date: November 29, 2007

**STATE OF NEW JERSEY
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director
November 28, 2007 Council Meeting**

**Thomas Caggiano¹
Complainant**

GRC Complaint No. 2007-47

v.

**Borough of Stanhope (Sussex)²
Custodian of Records**

Records Relevant to Complaint:

- 1) Examine property record cards for U.S. Mineral properties;
- 2) Examine property record cards for three (3) properties owned by Thomas Caggiano and Kathryn Caggiano on East Drive;
- 3) Examine P. David Zimmerman contract for 2005 for professional planner services for area in need of redevelopment, study and copy of contract and newspaper announcement.

Request Made: January 8, 2007

Response Made: January 8, 2007

Custodian: Robin R. Kline, Municipal Clerk

GRC Complaint Filed: January 17, 2007

Background

Because of a conflict of interest,³ and at the request of the Complainant, this matter should be referred to the Office of Administrative Law for a hearing to resolve the facts of this case and any possible violations of OPRA arising therefrom.

Conclusions and Recommendations

The Executive Director respectfully recommends the Council find that because of a conflict of interest and at the request of the Complainant, this matter be referred to the Office of Administrative Law for a hearing to resolve the facts and determine whether the custodian unlawfully denied access to the requested records, and if so, whether the denial

¹ No legal representation listed on record.

² No legal representation listed on record.

³ On or about October 21, 2007, the Executive Director of the GRC, Catherine Starghill, filed a criminal harassment complaint against the Complainant in Mercer County Municipal Court. On or about October 29, 2007, the Government Records Council obtained a temporary civil restraining order against the Complainant in the Superior Court of New Jersey, Chancery Division.

was knowing and willful in violation of OPRA and unreasonable under the totality of the circumstances.

Prepared By:

Karyn Gordon, Esq.
In House Counsel

Approved By:

Catherine Starghill, Esq.
Executive Director

November 21, 2007