



**OFFICE OF THE COUNTY PROSECUTOR
COUNTY OF MONMOUTH**

132 JERSEYVILLE AVENUE
FREEHOLD, NJ 07728-2374

(732) 431-7160

CHRISTOPHER J. GRAMICCIONI
MONMOUTH COUNTY PROSECUTOR

LORI LINSKEY
FIRST ASSISTANT PROSECUTOR
MICHAEL J. WOJCIECHOWSKI
DEPUTY FIRST ASSISTANT PROSECUTOR

JOHN G. McCABE JR.
CHIEF OF DETECTIVES

September 4, 2019

John Ackerson

opra+request-7071-f7c1ea8c@requests.opramachine.com

Re: OPRA request dated September 1, 2019

Dear Mr. Ackerson,

This office received your records request dated Sunday, September 1, 2019 via e-mail on September 3, 2019 and it was received by the records custodian on the same date. You requested the following:

Records requested:

Recorded audio of PD and Fire Department Radio Traffic from 15 Willow Brook Rd Fire on Nov 20, 2018
Coroner report on 4 victims

The police and fire audio recordings in response to this homicide, as well as the coroner reports for the four homicide victims, are criminal investigatory records under OPRA. N.J.S.A. 47:1A-1.1 defines a criminal investigatory record: A record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency, which pertains to any criminal investigation. "Criminal investigatory files include records involving all manner of crimes, resolved or unresolved, and include information that is part and parcel of an investigation, confirmed or unconfirmed." Janeczko v. New Jersey Department of Law and Public Safety, GRC Complaint Nos. 2002-79 and 2002-80, Analysis and Conclusion; Nance v. Scotch Plains Township Police Department Custodian of Record, GRC Complaint No. 2003-125 ("records pertaining to disorderly persons offenses, including petty offenses, which are not required by law to be made, maintained or kept on file that is held by a law enforcement agency involving a criminal investigation are deemed to be "criminal investigatory records," and are not disclosable, pursuant to OPRA"). Criminal investigatory records are exempt from disclosure in response to an OPRA request. N.J.S.A. 47:1A-1.1(1). North Jersey Media Group, Inc. v. Township of Lyndhurst, 229 N.J. 541 (July 11, 2017); Paff v. Ocean Cty. Pros. Off., 235 N.J. 1 (2018). In addition, autopsy reports have been found to be criminal investigatory records. McCrone (The Trenton Times) v. Burlington County Prosecutor's Office, GRC Complaint No. 2005-146 (November 2005); Crook v Atlantic County Prosecutor's Office, GRC 2010-92 (March 29, 2011). This case is presently being prosecuted in Superior Court. Therefore, the records you requested will not be released.

Under the common law, the State submits that the balancing test in this case weighs against disclosure of the records you requested. Loigman v. Kimmelman, 102 N.J. 98 (1986); North Jersey Media Group, Inc. v. Township of Lyndhurst, 229 N.J. 541 (July 11, 2017); Paff v. Ocean Cty. Pros. Off., 235 N.J. 1 (2018). This is not a police involved shooting; thus, the public's right to know about possible excessive use of force is not applicable here. What we do have here is a quadruple homicide with a family member being charged as the alleged perpetrator. We also have two victims who are children. The State's interest in protecting this prosecution and the defendant's right to a fair trial are paramount, and far outweigh the public's curiosity about these crimes. As stated above, this case is pending in Superior Court.

It would also violate the Caneiro family's right to respect and privacy if we were to release coroner reports of four homicide victims, including two children. N.J.S.A. 47:1A-1; Burnett v. County of Bergen, 198 N.J. 408, 425-26 (2009). The release of these records would violate the privacy provision set forth in N.J.S.A. 47:1A-1; the Victim's Rights Amendment, which provides that "a victim of a crime shall be treated with fairness, compassion and respect by the criminal justice system," N.J. Constitution, Article I, Paragraph 22; as well as the Crime Victim's Bill of Rights which provides that a crime victim is "[t]o be treated with dignity and compassion by the criminal justice system," N.J.S.A. 52:4B-36a. Asbury Park Press v. Ocean County Prosecutor's Office, 374 N.J. Super. 312, 315, 330-31 (Law Div 2004). The release of the records to the public would also necessarily include the likelihood of subsequent disclosure, and such additional disclosures would result in additional violations of this family's privacy. Burnett, supra, 198 N.J. at 427. Therefore, the family's privacy interests outweigh the public's interest in access to the records.

For all of the reasons noted above, your request is denied.

In the event of a clarification or appeal, this office reserves the right to raise any other ground for denial not raised in this response. The failure of this office to assert an exception or privilege at this time does not act as a waiver of any grounds for denial.

Very truly yours,

CHRISTOPHER J. GRAMICCIONI
MONMOUTH COUNTY PROSECUTOR

/s/ *Jennifer Lipp*

By: Jennifer A. Lipp
Assistant Prosecutor