



**OFFICE OF THE COUNTY PROSECUTOR
JENNIFER WEBB-MCRAE
CUMBERLAND COUNTY PROSECUTOR**

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February 6, 2024

Via email to: opra+request-57728-0db614d6@requests.opramachine.com

Re: Records request

Dear Ms. Erin:

Please accept this letter in response to your records request which was first received by this Records Custodian on January 27, 2024. Your request is for the following records: (1) Emails to and from Leslie Snock from December 1, 2023 to January 26, 2024 indicating the SUBJECT, TIME, DATE, TO, FROM, and any COPIED INDIVIDUALS as they relate to Jason Samaritano and/or Erin Samaritano and Kenneth Rosellini; (2) Emails to and from Monica Mosley from November 3, 2023 to January 26, 2024 indicating the SUBJECT, TIME, DATE, TO, FROM, and any COPIED INDIVIDUALS as they relate to Jason Samaritano and/or Erin Samaritano; (3) Emails to and from Ashley Cornwall from November 3, 2023 to January 26, 2024 indicating the SUBJECT, TIME, DATE, TO, FROM, and any COPIED INDIVIDUALS as they relate to Jason Samaritano and/or Erin Samaritano; (4) Emails to and from Jennifer Webb-McRae from November 3, 2023 to January 26, 2024 indicating the SUBJECT, TIME, DATE, TO, FROM, and any COPIED INDIVIDUALS as they relate to Jason Samaritano and/or Erin Samaritano.

With regard to request (1), please find all responsive records attached as Responsive Records A. With regard to request (2), please find all responsive records attached as Responsive Records B. With regard to request (3), please find all responsive records attached as Responsive Records C. With regard to request (4), please find all responsive records attached as Responsive Records D.

These requests are most analogous to the matter of Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-08 (April 2010), where a requestor requested all emails from a specified sender/recipient ranging from a specified time period. Seeking to curb further ambiguity with regard to what constitutes a valid request for emails under the Open Public Records Act, then, the Government Records Counsel in Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-08 (April 2010), clearly stated: "In accord with MAG, supra, and its progeny, in order to specifically identify an e-mail, OPRA requests must contain (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail was

transmitted or the emails were transmitted, and (3) a valid e-mail request must identify the sender and/or the recipient thereof". Accordingly then, a search of this office's email records was conducted for all emails sent to or received by your named individuals which occurred during your specified date ranges, utilizing the subject matter keywords: With regard to request (1), "Jason Samaritano", "Erin Samaritano" and "Kenneth Rosellini". With regard to request (2), (3) and (4), the subject matter keywords "Jason Samaritano" and "Erin Samaritano" were utilized.

Please note that redactions have been made from these records as required under the provisions of the Open Public Records Act. This includes records exempt from release under OPRA as advisory and deliberative materials, which are exempt from the provisions of the Open Public Records Act. Advisory and deliberative materials are exempt from disclosure pursuant to the statutory exemption from the Open Public Records Act for records that constitute inter-agency or intra-agency advisory, consultative, or deliberative material. N.J.S.A. 47:1A-1.1. See also In Re the Liquidation of Integrity Insurance Company, 165 N.J. 75 (2000) and Education Law Center v. NJ Department of Education, 198 N.J. 274 (2009). Notably, in Educ. Law Ctr. v. N.J. Dep't of Educ., 198 N.J. 274 (2009), the Court held that "a record, which contains or involves factual components, is entitled to deliberative-process protection when it was used in the decision-making process and its disclosure would reveal deliberations that occurred during that process". Id. at 280. Records have also been redacted which constitute criminal investigatory records which are exempt from the provisions of the Open Public Records Act. Furthermore, a criminal investigatory record remains exempt from disclosure even after the criminal investigation has been closed. Donna Janeczko v. New Jersey Department of Law and Public Safety, Division of Criminal Justice, Custodian of Record, GRC Complaint Nos. 2002-79 and 2002-80; Andrew Johnson/Press of Atlantic City v. New Jersey Division of State Police, Custodian of Record, GRC Complaint No. 2004-46.

Please also note that redactions have been made pursuant to the exception to the Open Public Records Act for records constituting internal affairs records. OPRA's broad right to access is not absolute, but is instead limited by "established public-policy exceptions," stated in the statute, which declare "[a] government record shall not include... information which is deemed to be confidential." Gilleran v. Bloomfield, 227 N.J. 159, 170 (2016) (quoting N.J.S.A. 47:1A-1.1). Similarly in North Jersey Media Group v. Bergen County Prosecutor's Office, 447 N.J. Super. 182, 201-202 (App. Div. 2016) the Court recognized that the provisions of the Open Public Records Act specifically do not abrogate or erode existing exemptions to public access, including "regulation[s] promulgated under the authority of any statute or Executive Order of the Governor" or "any executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law". N.J.S.A. 47:1A-9.

Internal affairs investigations by law enforcement agencies fall under the supervision of the Attorney General, who is New Jersey's chief law enforcement officer. N.J.S.A. 52:17B-98. The Guidelines of the Attorney General were adopted pursuant to N.J.S.A. 40A:14-181 mandating that every law enforcement agency in New Jersey adopt and implement guidelines consistent with the guidelines governing the "Internal Affairs Policy and Procedures". These guidelines "are binding upon local law enforcement agencies". Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark, 459 N.J. Super. 458, 500 (App. Div.), certif. granted, 240 N.J. 7 (2019). The

Internal Affairs Guidelines specifically mandate that the resulting materials from internal investigations are confidential. IAPP § 9.6.1.

Accordingly, the Attorney General Guidelines within the Internal Affairs Policy and Procedures act with the force of law in rendering materials generated from internal investigations exempt from public access pursuant to the Open Public Records Act, as the Government Records Council has repeatedly held. Carmelo Lio v. Borough of Fairview (Bergen), GRC Complaint No. 2014-431 (November 2015), Wares v. Township of West Milford (Passaic), GRC Complaint No. 2014-274 (May 2015), Blaustein v. Lakewood Police Dep't (Ocean), GRC Complaint No. 2011-102 (June 2012), and Rivera v. Borough of Keansburg Police Dep't (Monmouth), GRC Complaint No. 2007-222 (June 2010).

The Cumberland County Prosecutor's Office reserves the right to raise any other ground for denial not raised in this response. The failure of the Cumberland County Prosecutor's Office to assert an exception or privilege does not act as a waiver of any ground for denial. If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the Cumberland County Prosecutor's Office to deny access. At your option, you may institute a proceeding in the Superior Court of New Jersey. All questions regarding complaints filed in Superior Court should be directed to the Court.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen C. Sayer", is written over the typed name.

Stephen C. Sayer [114352015]

Assistant Prosecutor

Alternate Records Custodian