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THE CITY OF NEW BRUNSWICK
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MUNICIPAL PROSECUTORS

ROBERT H. GOODWIN
ROBERT M. ADOCHIO
MARK CINTRON

August 22, 2019

VIA EMAIL ONLY at: ckratovil@gmail.com

Mr. Charlie Kratovil

RE: Request for Aggravated Assault Incident Reports
OPRA 19.07_343

Dear Mr. Kratovil:

The City is in receipt of your email of August 7, 2019, in which you make further inquiry regarding the denial of your OPRA request bearing number 19.07_343, in which you requested, "all incident reports, including supplemental reports, for all aggravated assaults...". As Captain Miller advised in his initial response the police incident and supplemental reports are criminal investigatory and are not subject to disclosure under the OPRA statute. However, Captain Miller did provide a list of all incidents that were reported as aggravated assaults, for the time frame requested, with certain redactions explained.

The denial was based on the statutory exemption for criminal investigatory records found in N.J.S.A. 47:1A-1.1(4). A similar, but distinct exemption is found at N.J.S.A. 47:1A-3.a. whereby records of an ongoing investigation are generally exempt from disclosure if disclosure would be detrimental to the public interest. Generally, an investigation involving an aggravated assault dating back to January 1, 2019 would still be under investigation due to several factors including but not limited to the court calendar, the need for follow-up investigatory measures, victim availability, witness availability, etc. To make a determination as to which, if any, such investigations are complete, and therefore subject to disclosure pursuant to the common law, would require research as opposed to a simple search of the records maintained by the City of New Brunswick Police Department. Also consider that the details of any open criminal investigation that would fall within the parameters of the records you seek may need to be protected and shielded from disclosure in order to ensure a fair and impartial investigation and prosecution, and the need to disclose those records to the public may not outweigh the needs of the police department to keep the records secure from disclosure. Unfortunately, your OPRA request was broad in the sense that you did not identify a specific incident where Captain Miller could apply the proper test to weigh your needs or desires over the need to protect the integrity of an ongoing criminal investigation. However, if there is a specific incident which would like to

identify then I suggest you submit an amended request for records/documents that are subject to disclosure under the law.

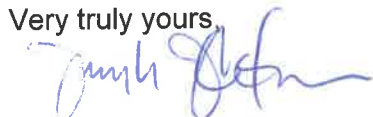
As to your claim that Captain Miller's response ignores your common law right of access please be advised that your request was viewed as being overly broad as it did not specify a particular case or incident for which you sought or now seek a response in conformity with 47:1A-3.b. Furthermore, it is my understanding that you are on a list of individuals who receive all press releases from the City of New Brunswick Police Department. It is further my understanding that you have recently received several press releases that provided the information required under 47:1A-3.b. Copies of previously provided press releases are attached for your convenient review.

Your displeasure with Captain Miller's response as you stated at the City Council meeting of August 7, 2019 is understood, as it is also understood that you are actually trying to obtain information on the number of reported shootings that have occurred in the City since the beginning of the year. Captain Miller has explained to you that there is no one document that details the information that you seek. He further explained at the meeting that it was only a suggestion that you ask for the aggravated assaults as a shooting may fall within that reporting category, but as it was also explained, that is not necessarily the case in all such incidents. While an assault by firearm may be considered an aggravated assault it may also be categorized as a different crime, thus the discrepancy with the list provided and your claims that some known shootings were not included.

As explained to you several times, "shootings" are not a classification the police department uses to define a specific crime which involves a firearm. Those crimes can be classified in many different ways depending on the situation. Criminal investigations are dynamic in nature and may not conform to the static format of reporting you desire to support statistical analysis. A shooting incident may be identified as, but not limited to, an aggravated assault, an attempted murder, a homicide, an array of weapons offenses, terroristic threats, kidnapping or several other classifications. Each investigation is examined on a case by case basis and recorded as the details warrant.

Pursuant to the OPRA statute and the common law right of access the police department will only provide records that exist, in the format in which they exist, and to the extent that they are subject to disclosure. It is unfortunate that you do not like the document that Captain Miller was able to create for you, but it is important to note that your request for incident and supplemental reports of all aggravated assaults report from January 1, 2019 was denied based on two clearly defined exemptions to the OPRA statute, and absent some specificity as to a particular incident the police department is not in a position to research each and every incident to determine which if any would be subject to the disclosure of information detailed in 47:1A-3.b.

Very truly yours,



Joseph J. Catanese
Assistant City Attorney

cc: T.K. Shamy, City Attorney
Leslie Zeledon, City Clerk
Captain Joseph T. Miller

Joseph T. Miller - CAPT. (NBPDNJ)

From: Joseph T. Miller - CAPT. (NBPDNJ)
Sent: Monday, January 7, 2019 11:52 AM
To: Charlie Kratovil
Subject: RE: 3b request - joyeria incident

Mr. Kratovil:

On January 5, 2018 at approximately 5:00pm New Brunswick police officers responded to the 300 block of Townsend Street to investigate the report of shots fired. The investigation concluded that there were no victims who sustained gunshot wounds. Julian Salerno (51 year old male from Warren, NJ) was arrested in relation to the incident and charged with weapons related offenses, including unlawful possession of a firearm.

Captain J.T. Miller
Public Information Officer
New Brunswick Police Department
New Brunswick, NJ 08901
(732) 745-5259
jmiller@nbpdnj.org

From: Charlie Kratovil <ckratovil@gmail.com>
Sent: Sunday, January 06, 2019 12:37 PM
To: Joseph T. Miller - CAPT. (NBPDNJ) <JMiller@nbpdnj.org>
Subject: 3b request - joyeria incident

Hello Captain,

Under NJSA 47:1A-3(b) please provide all required info about the incident at 330 Townsend Street during the afternoon/evening of Saturday, January 5. Thank you.

All the best,
Charlie



NEW BRUNSWICK POLICE DEPARTMENT



NEWS RELEASE

FOR IMMEDIATE RELEASE

Saturday, May 11, 2019

For further information contact:

Captain J.T. Miller, Public Information Officer

(732) 745-5259 (office)

jmiller@nbpdnj.org (email)

Police Investigate a Report of Gunshots on Somerset Street

The New Brunswick Police Department is investigating a report of shots fired, that occurred this morning at approximately 8:42 am, in the area of Somerset Street and Division Street. A preliminary investigation suggests that a passenger exited a dark colored 4-door vehicle and fired a firearm at a silver colored vehicle. There were no reported injuries as a result of this incident. It is believed that the dark colored vehicle fled up Somerset Street towards Franklin Township and the silver vehicle fled towards Easton Avenue. There is no further suspect description at this time. Anyone one with information is asked to call Detective Erika DiMarcello at (732) 745-5217.

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Joseph T. Miller - CAPT. (NBPDNJ)

From: Joseph T. Miller - CAPT. (NBPDNJ)
Sent: Monday, July 8, 2019 10:01 AM
To: Charlie Kratovil
Subject: RE: 3b request - shooting at Throop & Delavan

Mr. Kratovil:

On July 4, 2019 at approximately 2:30am New Brunswick police officers responded to the area of Delevan St. and Throop Avenue to investigate a possible shooting. The preliminary investigation found two victims both with non-life threatening gun shot wounds. Both victims are adult males, one from Edison, NJ and the second from New Brunswick, NJ. This investigation is ongoing.

Captain J.T. Miller
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(732) 745-5259
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From: Charlie Kratovil <editor@newbrunswicktoday.com>
Sent: Thursday, July 4, 2019 11:07 AM
To: Joseph T. Miller - CAPT. (NBPDNJ) <JMiller@nbpdnj.org>
Subject: 3b request - shooting at Throop & Delavan

Hello Captain,

Under section 3(b) of OPRA, please provide all required information for the shooting incident this morning at Throop and Delavan. The incident took place sometime between 2 and 3 am, I believe. Thank you for your help.

Charlie Kratovil
Editor, New Brunswick Today
732-993-9697



NEW BRUNSWICK POLICE DEPARTMENT



NEWS RELEASE

FOR IMMEDIATE RELEASE

Saturday, July 13, 2019

For further information contact:

Captain J.T. Miller, Public Information Officer

(732) 745-5259 (office)

jmiller@nbpdnj.org (email)

Fistfight Leads to Shots Fired on Senior Street

At approximately 3:00am this morning gunshots were fired on Senior Street between Sicard and Wyckoff Streets. The preliminary investigation suggests that the shots were fired as the result of a fistfight that happened in the street between multiple individuals. There were no reports of injuries at this time. The New Brunswick Police Department continues to investigate this incident, and asks anyone with information to call Detective Ray Quick at (732) 745-5217.

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NEW BRUNSWICK POLICE DEPARTMENT



NEWS RELEASE

FOR IMMEDIATE RELEASE

Friday, July 26, 2019

For further information contact:

Captain J.T. Miller, Public Information Officer

(732) 745-5259 (office)

jmiller@nbpdnj.org (email)

Police Investigate Shooting on Seaman Street

New Brunswick police detectives are investigating a shooting which occurred at approximately 12:15pm yesterday, in the 200 block of Seaman Street. Two male victims (both residing in New Brunswick) received non-life threatening injuries as a result of the shooting. Both victims are familiar with each other and the preliminary investigation suggests they were the targets of the shooting. Both victims have refused to cooperate with the investigating detectives. Anyone with information about the incident is asked to contact the New Brunswick Police Detective Bureau at (732) 745-5217.

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