



MORRIS COUNTY PROSECUTOR'S OFFICE

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Robert M. McNally

Chief of Detectives

February 27, 2024

VIA Email:

Monica Ciardi

opra+request-58610-16f7ec1c@requests.opramachine.com

RE: MCPO OPRA File Number 24-0027

Dear Ms. Ciardi:

The Morris County Prosecutor's Office received your Open Public Records Act (OPRA) and common law right of access request dated February 20, 2024, on February 21, 2024, and it was received by the records custodian on the same date. As such, the seven (7) business day deadline to respond to your request is March 1, 2024. You requested the following:

This is a request for public records made under OPRA and the common law right of access. I am not required to fill out an official form. Please acknowledge receipt of this message.

Records requested:

Phone, email and all

Correspondence and discovery on ALL my cases

Please note that a request seeking correspondence (including [emails/texts]) must contain certain required elements. As your request does not comply with these requirements, it is invalid. Aswad Ayinde v PCPO, GRC Complaint No. 2018-52 (Jan 2020), (to be valid, a request for correspondence must contain: (1) the content and/or subject of the correspondence, (2) the specific date or range of dates during which the correspondence(s) were transmitted, and (3) the identity of the sender and/or the recipient thereof); Elcavage v. West Milford Twp. (Passaic), GRC Complaint No. 2007-07 (April 2010). *See also* Verry v. Borough of South Bound Brook (Somerset), GRC Complaint No. 2009-124 (April 2010); Inzelbuch, Esq. (O.B.O. Ctr. for Educ.) v. Lakewood Bd. of Educ. (Ocean), GRC Complaint No. 2015-68 (September 2016).

A government record, which contains factual components, is subject to the deliberative process privilege when it is used in the decision-making process and its disclosure would reveal the nature of the deliberations that occurred during that process. Education Law Center v. N.J. Dept. of

Education, 198 N.J. 274, 280-81 (2009); see also Gilleran v. Bloomfield, 227 N.J. 159, 174-75 (2016) (citing Education Law Center, *supra*, for the proposition that “disclosure of a seemingly fact-based document could reveal deliberative content because that protectable type of information could be gleaned from a thoughtful and contextual review of the document[,]” thus requiring confidentiality in order to honor the purpose behind the exception).

While your request indicates that you are also seeking discovery, the New Jersey State Legislature did not construct OPRA as a substitute for discovery; as the legislature created “no law required that police reports be maintained or kept and thus reports were not subject [OPRA].” State v. Marshall, 148 N.J. 89, 272–73 (1997), (citing Asbury Park Press, Inc. v. Borough of Seaside Heights, 246 N.J. Super. 62, 67 (Law Div.1990)). OPRA is not an auxiliary mechanism, nor does it abrogate, the State’s discovery obligations as set forth in New Jersey Court Rule 3:13-3. As such, your status as the defendant in the matter does not expand your rights to access under OPRA. These records were previously supplied to you, or your counsel, by this Office in the course of fulfilling our discovery obligations during the pendency of these matters.

You have also requested the records under the common law. Access under the common law requires that “the person seeking access must ‘establish an interest in the subject matter of the material’.” Mason v. City of Hoboken, 196 N.J. 51, 67 (2008) (quoting Keddie v. Rutgers, 148 N.J. 36, 50 (1997)). As your request fails to declare a particularized interest in the non-supplied requested records, upon which a balancing of interests may be assessed, access to these records is also denied under common law. See O’Boyle v. Borough of Longport, 218 N.J. 168, 200 (2014).

The Office of the Morris County Prosecutor reserves the right to raise any other grounds for denial not raised in this response. Failure of the Office of the Morris County Prosecutor to assert an exception or privilege does not act as a waiver of any grounds for denial. Furthermore, a reviewing Court or the Government Record’s Council (“GRC”) may deem a denial of access to be authorized on grounds other than those advanced by a custodian. Paff v. Twp. of Plainsboro, A-2122-05T2, 2007 WL 957289, at *2 (N.J. Super. Ct. App. Div. Apr. 2, 2007) aff’g, Paff v. Township of Plainsboro, GRC Complaint No. 2005-29 (March 2006).

You have a right to challenge the decision by the Office of the Morris County Prosecutor to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the GRC by completing Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at PO Box 819, Trenton, NJ, 08625, e-mail at grc@dca.state.nj.us, or on the GRC’s website at www.state.nj.us/grc. The Council can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the New Jersey Superior Court Clerk.

Sincerely,



Thomas C. Schmid
Assistant Prosecutor || Custodian of Records

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MWaxPKrmkpxGKbKUCTFOMj0wvs8%3D&reserved=0

Please note that in some cases publication of requests and responses will be delayed.

If you find this service useful as an OPRA custodian, please ask your web manager to link to us from your organisation's website.
