



MORRIS COUNTY PROSECUTOR'S OFFICE

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Robert M. McNally

Chief of Detectives

February 13, 2025

VIA Email:

Erin

opra+request-68523-dc6a61b1@requests.opramachine.com

RE: MCPO OPRA File Number 24-0164

Dear Ms. Erin:

The Morris County Prosecutor's Office received your Open Public Records Act (OPRA) request dated October 31, 2024, on November 1, 2024, and it was received by the records custodian on the same date. You requested the following:

- (1) Emails to and from Assistant Prosecutor Kelly Sandler involving defendant Monica Ciardi.

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).

Your request for the above records is denied on the grounds that they contain inter-agency advisory, consultative, or deliberative material related to said file is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1. 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).

Such communications are also exempt from production pursuant to the work product privilege which protects documents and other materials prepared in anticipation of litigation. New Jersey Court Rule 4:10-2(c).

Lastly, these communications are considered criminal investigatory records. Such records are exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-1.1 to -13, and Janeczko v. Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint Numbers 2002-79 and 2002-80 (affirmed on appeal May 2004). Criminal investigatory records are defined as records that are held by a law enforcement agency, which pertain to any criminal investigation and of which are not required by law to be made, maintained or kept on file. Ibid. A criminal investigatory record remains exempt from disclosure even after the criminal investigation has been closed. West Solloway v. Bergen County Prosecutor's Office Custodian of Records, GRC Complaint No. 2011-39; Woojin Hwang v. Bergen County Prosecutor's Office Custodian of Records, GRC Complaint No. 2011-348; 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. Cf. R. 1:38-3(f)(3) as to investigative police reports under the control of a court, unless they have been admitted into evidence.

Moreover, the New Jersey Supreme Court and the New Jersey Government Records Council have both held that records which are not "required by law to be made, maintained or kept on file," are exempt from disclosure under OPRA when they pertain to any criminal investigation or related civil enforcement proceeding. See N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 556 (2017) (citing N.J.S.A. 47:1A-1.1); see also, Kovacs v. Irvington Police Department, GRC Complaint No. 2014-196 (January 2015) (holding and observing that the Government Records Council "has long held that police incident reports" are exempt from disclosure under OPRA as "criminal investigatory records" when they pertain to any criminal investigation or related civil enforcement proceeding, citing Nance v. Scotch Plains Police Dep't, GRC Complaint No. 2003-125 (January 2005); Rivera v. Passaic Cnty. Sheriff's Office, GRC Complaint No. 2010-152 (May 2011); and Connelly v. Twp. of Montville, GRC Complaint No. 2013-59 (September 2013)); Rivera v. Town of West New York, GRC Complaint No. 2010- 208 (February 2013), citing Bart v. City of Passaic, GRC Complaint No. 2007-162 (April 2008); and Executive Order No. 26 (Gov. McGreevy 2002); Hockensmith v. Atlantic Cnty. Prosecutor's Office, GRC Complaint No. 2014-288 (Mar. 2015) (observing that under OPRA "criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes *information that is part and parcel of an investigation, confirmed and unconfirmed.*") (emphasis added and internal citations omitted).

Finally, our agency's interest in preventing disclosure of the non-supplied requested records is closely linked to the public policy supporting the statutory exemptions in N.J.S.A. 47:1A-1.1 and -3 described above. It is clearly inherent that the Legislature placed the confidentiality of criminal investigatory records front and center in its general public policy findings and declarations regarding OPRA. See N.J.S.A. 47:1A-1. The Legislature provided not one but two separate exceptions to be used to prevent the disclosure of certain specific categories of records relating to ongoing investigations. See N.J.S.A. 47:1A-3. To ignore this mandate would reduce to mere surplusage the Legislature's deliberate, unique treatment of certain investigatory records throughout OPRA's statutory scheme. See DKM Residential Props v. Twp. of Montgomery, 182 N.J. 296, 307 (2005) ("When interpreting a statute or regulation, we endeavor to give meaning to

all words and to avoid an interpretation that reduced specific language to mere surplusage.”). For the foregoing reasons, a balancing of the relative interests of the parties would favor nondisclosure of your requested records. As such, access is also denied under common law.

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.

Note that any challenge to a denial of a request for records under the common law cannot be made to the GRC, as the GRC only has jurisdiction to adjudicate challenges to denials of OPRA requests. A challenge to the denial of access under the common law can be made by filing an action in Superior Court. All questions regarding complaints filed in Superior Court should be directed to the New Jersey Superior Court Clerk.

This OPRA request is now considered answered and closed.

Sincerely,

A handwritten signature in blue ink, appearing to read 'TS', is written over a horizontal line.

Thomas C. Schmid

Assistant Prosecutor || Custodian of Records

Knab, Meghan G.

From: Erin <[REDACTED]>
Sent: Thursday, October 31, 2024 5:57 PM
To: Prosecutors OPRA Requests
Subject: OPRA request - Assistant Prosecutor emails request

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Morris County Prosecutor's Office,

Please accept this electronic request for public records made under OPRA and the common law right of access. I am not required to fill out an official form or use a particular software platform to submit my request per NJSA 47:1A-6(f), which states that an email from a requestor including all of the information required on the adopted form shall suffice in place of a completed form as a valid government record request.

I HAVE NOT been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

I WILL NOT use the requested government records for a commercial purpose.

I AM NOT seeking records in connection with a legal proceeding.

Records requested:

1) Emails to and from Assistant Prosecutor Kelly Sandler involving defendant Monica Ciardi.

My preferred delivery method for response(s) to this request is by E-mail as attachments. Please confirm you have received this request. If you are not the custodian of records, please forward my request to that person and provide their email address to me for future reference.

Yours faithfully,

RECEIVED
By Meghan Knab at 9:44 am, Nov 01, 2024

Erin

Please deliver records electronically via email to the below UNIQUE address for all replies to this request:

opra+request-68523-dc6a61b1@requests.opramachine.com

Is ProsecutorOPRA@co.morris.nj.us the wrong address for OPRA requests to Morris County Prosecutor's Office? If so, please contact us using this form:

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View this OPRA request & responses online:

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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.

"OPRAmachine's mission is to give people easy and affordable access to New Jersey public records.

For more information, contact us at: (732) 707-1628 or PO Box 3180, New Brunswick, NJ 08903."
