



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

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December 1, 2023

Via email to: opra+request-55163-6bf57905@requests.opramachine.com

Re: Records request

Dear Ms. Murph:

Please accept this letter in response to your records request dated November 9, 2023 and submitted via email. Your request is for the following records: “3/15/21 to 4/15/21; 8/9/21 to 9/9/21; 8/1/23 to 8/28/23”. On November 13, 2023, I sent to you via email a clarification request regarding this records request where you appear to have not requested any records. On November 17, 2023, this office sent you a follow up email advising that in the absence of any clarification response from you, I would be proceeding under the assumption that your request was intended to serve as expansion upon your original OPRA request submitted to this office on October 20, 2023, wherein you requested the following records: “Emails To and From Assistant Prosecutor Shapiro including TO, FROM, SUBJECT, DATE, TIME AND ATTACHMENTS regarding Dante Hayes from: 5/18/22 to 6/28/22; 10/11 to 11/11/22; 12/20/22 to 1/20/23” and a response was provided to you, along with all responsive records on October 31, 2023. Accordingly, in the interest of transparency, I am interpreting your OPRA request dated November 9, 2023 as requesting all such emails for the time periods of 3/15/21 to 4/15/21; 8/9/21 to 9/9/21; 8/1/23 to 8/28/23.

Please find all responsive records attached as Responsive Records A.

This request is 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". Where your present request solely refers to the subject matter sought as "Dante Hayes", an electronic search was conducted of this office's email records conforming the parameters you described and utilizing the keyword "Dante Hayes".

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. Redactions have also been made in the form of the personal cell phone number of one individual, pursuant to N.J.S.A. 47:1A-1 relating to citizen's reasonable privacy interests, wherein "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy."

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,



Stephen C. Sayer [114352015]
Assistant Prosecutor
Alternate Records Custodian