



OFFICE OF THE HUDSON COUNTY PROSECUTOR

595 NEWARK AVENUE
JERSEY CITY, NEW JERSEY 07306

ESTHER SUAREZ
PROSECUTOR

TELEPHONE: (201) 795-6400
FAX: (201) 795-3365

June 2, 2022

VIA ELECTRONIC MAIL ONLY

Opra+request-32186-167b240e@requests.opramachine.com

Wayne Jenkins

Re: May 25, 2022 OPRA/Common Law Request for Affidavit of Probable Cause, Complaint, etc. Related to the Recent Arrest and Formal Charging of Bayonne Police Department Sgt. Richard Killmer

Dear Mr. Jenkins:

The Hudson County Prosecutor's Office (HCPO) is in receipt of your above request under the New Jersey Open Public Records Act, N.J.S.A. 47: 1A-1, et. seq. and Common Law. (Copy is attached for your easy reference.)

Please be advised that the criminal charges in question were filed and served on or about May 24, 2022. Therefore the HCPO is currently in the very preliminary stages of its investigation. Most of the records you request ("etc.") in your above OPRA request, if they exist, are exempt from disclosure as records that are part of an investigation in progress, see N.J.S.A. 47:1A-3.

Moreover, even after the conclusion of the criminal investigation, your queries may remain exempt from disclosure as criminal investigatory records. Criminal investigatory records are defined as "record[s] which [are] not required by law to be made, maintained or kept on file that are held by a law enforcement agency which pertain to any criminal investigation or related civil enforcement proceeding." These are not government records and are therefore exempt from disclosure pursuant to OPRA. N.J.S.A. 47:1A-1.1; Newman v. New Jersey State Police, GRC Complaint No. 2013-347 (July 2014) (incident reports describing New Jersey State Police response to a call are criminal investigatory records); Maniscalco v. Atlantic County Prosecutor's Office, GRC Complaint No. 2012-247 (July 2013) (records based upon complaint filed with ACPO were criminal investigatory records); Nance v. Scotch Plains Twp. Police Dep't, GRC Complaint No. 2003-125 (January 2005) (police incident reports, continuation reports, and property and evidence reports are criminal investigatory records); Executive Order No. 69 (Whitman) (arrest booking photos are not subject to OPRA). Even after the conclusion of a case, such documents retain their

character as criminal investigatory records. Janeczko v. NJ Department of Law and Public Safety, GRC Complaint Nos. 2001-79 and 2002-80 (June 2004); Johnson (on behalf of Press of Atlantic City) v. NJ Division of State Police, GRC Complaint No. 2004-46 (June 2004). Indeed, even in cases where no criminal charges are filed, the reports remain classified as criminal investigatory records. Id.

The attached records listed herein are in response to your request:

Complaint-Summon 000372 Bayonne Municipal Court (seven pages)

In addition, you requested the same records under the common law. Unlike with OPRA, the burden to show that access to public records should be permitted lies with the requestor. "The common-law right to access public records depends on three requirements: (1) the records must be common-law public documents; (2) the person seeking access must 'establish an interest in the subject matter of the material'; and (3) the citizen's right to access 'must be balanced against the State's interest in preventing disclosure'." Keddie v. Rutgers, 148 N.J. 36, 50 (1997) (internal citations omitted). See also Loigman v. Kimmelman 102 N. J. at 108 (1986).

Once you provide the basis for your assertion that the documents you seek are common-law public documents and your interest in the subject matter of such records, the HCPO will analyze your request under the common law.

The Hudson County Prosecutor's Office reserves the right to raise any other grounds in support of this response. The failure of the Hudson County Prosecutor's Office to assert an exception, exemption or privilege does not act as a waiver of any ground for denial.

As with any OPRA request, you have the right to challenge the HCPO's determination. At your option, you may either file a complaint in writing with the Government Records Council (GRC), located in the Department of Community Affairs, or institute a proceeding in the Superior Court.

Very truly yours,

ESTHER SUAREZ
Prosecutor of Hudson County

By:


JOHN P. LIBRETTI
Chief of Civil Litigation Unit

JL/ Enclosures
c. Office of the Hudson County Counsel

OPRA request - Bayonne Sgt. Richard Killmer

Wayne Jenkins <opra+request-32186-167b240e@requests.opramachine.com>

Tue 5/24/2022 7:33 PM

To: OPRA <opra@hcopo.org>;

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or on clicking links from unknown senders.

Dear Hudson County Prosecutor's Office,

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:

Affidavit of Probable Cause, Complaint, etc related to the recent arrest and formal charging of Bayonne Police Department, Sgt. Richard Killmer

Yours faithfully,

Wayne Jenkins

Please use deliver records electronically via email to the below UNIQUE address for all replies to this request:
opra+request-32186-167b240e@requests.opramachine.com

Is opra@hcopo.org the wrong address for OPRA requests to Hudson County Prosecutor's Office? If so, please contact us using this form:

https://opramachine.com/change_request/new?body=hcopo

Disclaimer: This message and any reply that you make will be published on the internet. Our privacy and copyright policies: <https://opramachine.com/help/officers>

View this OPRA request & responses online:

https://opramachine.com/request/bayonne_sgt_richard_killmer

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.

COMPLAINT - SUMMONS

COMPLAINT NUMBER				THE STATE OF NEW JERSEY VS. RICHARD A KILLMER ADDRESS: [REDACTED] [REDACTED] [REDACTED]	
0901	S	2022	000372		
COURT CODE	PREFIX	YEAR	SEQUENCE NO.		
BAYONNE CITY MUNICIPAL COURT 630 AVENUE "C" BAYONNE NJ 07002-0000 201-858-6934 COUNTY OF: HUDSON					
# of CHARGES 1	CO-DEFTS	POLICE CASE # 2022050332		DEFENDANT INFORMATION SEX: M EYE COLOR: HAZEL DOB: [REDACTED] DRIVER'S LIC. # [REDACTED] DL STATE: NJ SOCIAL SECURITY [REDACTED] SBI #: [REDACTED] TELEPHONE #: [REDACTED] () LIVESCAN PCN #: 099902000256	
COMPLAINANT NAME: DET. R BUTTIMORE 595 NEWARK AVENUE JERSEY CITY NJ 07306					

By certification or on oath, the complainant says that to the best of his/her knowledge, information and belief the named defendant on or about **04/09/2022** in **BAYONNE CITY**, **HUDSON** County, **NJ** did: **WITHIN THE JURISDICTION OF THIS COURT, PURPOSELY, WITHOUT AUTHORIZATION OR IN EXCESS OF AUTHORIZATION, ACCESSED A BAYONNE LAW ENFORCEMENT DATABASE, SPECIFICALLY THE PRO PHOENIX DATABASE, IN VIOLATION OF N.J.S.A. 2C:20-25A. A CRIME OF THE THIRD DEGREE.**

in violation of:

Original Charge	1) 2C:20-25A	2)	3)
Amended Charge			

CERTIFICATION:

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signed: DET. R BUTTIMORE Date: 05/24/2022

The complaining witness is a law enforcement officer and a judicial probable cause determination is not required prior to the issuance of this Complaint-Summons.

SUMMONS

YOU ARE HEREBY SUMMONED to appear before the **Superior Court** in the county of: **HUDSON**
at the following address: **HUDSON COUNTY COURT**
ADMINISTRATION BUILDING 595 NEWARK AVENUE JERSEY CITY NJ 07306-0000
If you fail to appear on the date and at the time stated below, a warrant may be issued for your arrest.
Date of Arrest: **05/24/2022** Appearance Date: **06/09/2022** Time: **01:00PM** Phone: **201-795-6000**
Signature of Person Issuing Summons: DET. R BUTTIMORE Date: 05/24/2022

☐ Domestic Violence – Confidential

☐ Related Traffic Tickets
or Other Complaints

☐ Serious Personal Injury/ Death
Involved

Special conditions of release:

- ☐ No phone, mail or other personal contact w/victim
☐ No possession firearms/weapons
☐ Other (specify):

ORIGINAL

COMPLAINT – SUMMONS (Court Action)

COMPLAINT NUMBER										STATE V.									
0901		S		2022		000372		RICHARD A KILLMER											
COURT CODE		PREFIX		YEAR		SEQUENCE NO.													
FTA Bail Information				Date Bail Set:				Amount Bail Set: \$				by:				☐ Bail Recog. Attached			
Released on Bail		R.O.R.		Committed Default		Committed w/o Bail		Place Committed:				Date Referred to County Prosecutor:							
Date of First Appearance: 06/09/2022				☐ Advised of Rights by								Defendant Desires Counsel: ☐ Yes ☐ No							
Prosecuting Attorney Information						Defense Counsel Information													
Name:						Name:													
State		County		Municipal		Other		None		Retained		Public Def		Assigned		Waived		Other	
Original Charge		1) 2C:20-25A				2)				3)									
Amended Charge																			
Waiver Indt/Jury																			
Plea/Date of Plea		Plea:		Date:		Plea:		Date:		Plea:		Date:		Plea:		Date:			
Adjudication (* see code)		Finding Code:		Date:		Finding Code:		Date:		Finding Code:		Date:		Finding Code:		Date:			
Jail Term				Jail time credit		Susp. Imp				Jail time credit		Susp. Imp				Jail time credit		Susp. Imp	
Probation Term						Susp. Imp						Susp. Imp						Susp. Imp	
Cond. Discharge Term																			
Community Service																			
D/L Suspension Term																			
Fines/Costs		Fines:		Costs:		Fines:		Costs:		Fines:		Costs:		Fines:		Costs:			
VCCB/SNSF		VCCB		SNSF		VCCB		SNSF		VCCB		SNSF		VCCB		SNSF			
DEDR/Lab Fee		DEDR		LAB		DEDR		LAB		DEDR		LAB		DEDR		LAB			
CD Fee/Drug Ed Fnd		CD		DAEF		CD		DAEF		CD		DAEF		CD		DAEF			
DV Surch/Other Fees		DV		Other		DV		Other		DV		Other		DV		Other			
Restitution																			
Beneficiary:																			
Miscellaneous Information, Adjournments, Companion Complaints, Co-Defendants, Case Notes:										* Finding Codes									
Related Traffic Tickets and Complaints:										1 – Guilty									
										2 – Not Guilty									
										3 – Dismissed – Other									
										4 – Guilty but Merged									
										5 – Dismissed-Rule									
										6 – Dismissed Lack of Prosecution									
										7 – Dismissed – Pros Motion/Vic Req									
										8 – Conditional Discharge									
										D – Dismissed- Prosecutor Discretion									
										M – Dismissed- Mediation									
										P – Dismissed-Plea Agreement									
										S – Disposed at Superior									
										W – Dismissed-False ID									
JUDGE'S SIGNATURE										DATE									
ORIGINAL - Court Action										Page 2 of 7									
NJ/CDR1 1/1/2017																			

COMPLAINT - SUMMONS (DEFENDANT'S COPY)

COMPLAINT NUMBER			
0901	S	2022	000372
COURT CODE	PREFIX	YEAR	SEQUENCE NO.
BAYONNE CITY MUNICIPAL COURT 630 AVENUE "C" BAYONNE NJ 07002-0000 201-858-6934 COUNTY OF: HUDSON			
# of CHARGES 1	CO-DEFTS	POLICE CASE #: 2022050332	
COMPLAINANT NAME: DET. R BUTTIMORE		DEFENDANT INFORMATION SEX: M EYE COLOR: HAZEL DOB: [REDACTED] DRIVER'S LIC. # [REDACTED] DL STATE: NJ SOCIAL SECURITY # [REDACTED] SBI #: [REDACTED] TELEPHONE #: [REDACTED] LIVESCAN PCN #: 099902000256	

THE STATE OF NEW JERSEY

VS.

RICHARD A KILLMER

ADDRESS: **[REDACTED]**

By certification or on oath, the complainant says that to the best of his/her knowledge, information and belief the named defendant on or about **04/09/2022** in **BAYONNE CITY**, **HUDSON** County, NJ did: WITHIN THE JURISDICTION OF THIS COURT, PURPOSELY, WITHOUT AUTHORIZATION OR IN EXCESS OF AUTHORIZATION, ACCESSED A BAYONNE LAW ENFORCEMENT DATABASE, SPECIFICALLY THE PRO PHOENIX DATABASE, IN VIOLATION OF N.J.S.A. 2C:20-25A. A CRIME OF THE THIRD DEGREE.

in violation of:

Original Charge	1) 2C:20-25A	2)	3)
Amended Charge			

CERTIFICATION:

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment

Signed: **DET. R BUTTIMORE** Date: **05/24/2022**

The complaining witness is a law enforcement officer and a judicial probable cause determination is not required prior to the issuance of this Complaint-Summons.

SUMMONS

YOU ARE HEREBY SUMMONED to appear before the Superior Court in the county of: **HUDSON**
at the following address: **HUDSON COUNTY COURT**

ADMINISTRATION BUILDING 595 NEWARK AVENUE JERSEY CITY NJ 07306-0000

If you fail to appear on the date and at the time stated below, a warrant may be issued for your arrest.

Date of Arrest: **05/24/2022** Appearance Date: **06/09/2022** Time: **01:00PM** Phone: **201-795-6000**

Signature of Person Issuing Summons: **DET. R BUTTIMORE** Date: **05/24/2022**

☐ Domestic Violence – Confidential

☐ Related Traffic Tickets
or Other Complaints

☐ Serious Personal Injury/ Death
Involved

Special conditions of release:

- ☐ No phone, mail or other personal contact w/victim
- ☐ No possession firearms/weapons
- ☐ Other (specify):

COMPLAINT - SUMMONS (DEFENDANT'S COPY)

RETURN OF SERVICE INFORMATION

COMPLAINT NUMBER				THE STATE OF NEW JERSEY VS. RICHARD A KILLMER	
0901	S	2022	000372		
COURT CODE	PREFIX	YEAR	SEQUENCE NO		
BAYONNE CITY MUNICIPAL COURT 630 AVENUE "C" BAYONNE NJ 07002-0000 201-858-6934 COUNTY OF: HUDSON				ADDRESS: [REDACTED] [REDACTED]	
# of CHARGES	CO-DEFTS	POLICE CASE #:		DEFENDANT INFORMATION	
1		2022050332		SEX: M EYE COLOR: HAZEL DOB: [REDACTED] DRIVER'S LIC. # [REDACTED] DL STATE: NJ SOCIAL SECURITY # [REDACTED] SBI #: [REDACTED] TELEPHONE #: [REDACTED] LIVESCAN PCN #: 099902000256	
COMPLAINANT DET. R BUTTIMORE NAME: 595 NEWARK AVENUE JERSEY CITY NJ 07306					

By certification or on oath, the complainant says that to the best of his/her knowledge, information and belief the named defendant on or about **04/09/2022** in **BAYONNE CITY**, **HUDSON County, NJ** did: **WITHIN THE JURISDICTION OF THIS COURT, PURPOSELY, WITHOUT AUTHORIZATION OR IN EXCESS OF AUTHORIZATION, ACCESSED A BAYONNE LAW ENFORCEMENT DATABASE, SPECIFICALLY THE PRO PHOENIX DATABASE, IN VIOLATION OF N.J.S.A. 2C:20-25A. A CRIME OF THE THIRD DEGREE.**

in violation of:

Original Charge	1) 2C:20-25A	2)	3)
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Check ✓	Certification by Police Regarding Complaint-Summons
✓	I certify that I served the complaint-summons by delivering a copy to the defendant personally.
	I certify that I personally served the complaint-summons by leaving a copy at the defendant's usual place of abode with a competent member of the household of the age 14 or over _____ Name of family member over 14 years of age
	I certify that I mailed a copy of the complaint-summons by ordinary mail to the defendant at his or her last known address. _____ Defendant's last known address
	I certify that I served the complaint-summons by delivering a copy to a person authorized to receive service of process on the defendant's behalf. _____ Name and title of authorized person
	Other manner of service: I certify that I served the complaint-summons in the following manner: _____
	I certify that I was unable to serve the complaint-summons.

Signed: **DET. R BUTTIMORE HUDSON CO PROSECUTORS OFF** Date of Action: **05/24/2022**
 Name, Title and Department of Officer

RETURN OF SERVICE INFORMATION

Affidavit of Probable Cause

COMPLAINT NUMBER			
0901	S	2022	000372
COURT CODE	PREFIX	YEAR	SEQUENCE NO.
BAYONNE CITY MUNICIPAL COURT 630 AVENUE "C" BAYONNE NJ 07002-0000 201-858-6934 COUNTY OF: HUDSON			
# of CHARGES 1	CO-DEFTS	POLICE CASE #: 2022050332	
COMPLAINANT DET. R BUTTIMORE NAME: 595 NEWARK AVENUE JERSEY CITY NJ 07306		DEFENDANT INFORMATION SEX: M EYE COLOR: HAZEL DOB: [REDACTED] DRIVER'S LIC. # [REDACTED] DL STATE: NJ SOCIAL SECURITY [REDACTED] SBI #: [REDACTED] TELEPHONE #: () [REDACTED] LIVESCAN PCN #: 099902000256	

THE STATE OF NEW JERSEY

VS.

RICHARD A KILLMER

ADDRESS: [REDACTED]

Purpose: This Affidavit/Certification is to more fully describe the facts of the alleged offense so that a judge or authorized judicial officer may determine probable cause.

1. Description of relevant facts and circumstances which support probable cause that (1) the offense(s) was committed and (2) the defendant is the one who committed it:
On April 9, 2022, while off duty, Sergeant Richard Kilmer of the Bayonne Police Department accessed the Pro Phonenix Database. The investigation revealed Sergeant Kilmer's user ID and password had been used to log on to the Pro Phoenix Database from a Bayonne Police Department issued iPad. Another officer's personnel records were accessed in order to obtain a phone number of a family member. The family member was then contacted by Sergeant Kilmer for non-law enforcement purposes.

Affidavit of Probable Cause

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1/1/2017

Affidavit of Probable Cause

COMPLAINT NUMBER

0901

S

2022

000372

COURT CODE

PREFIX

YEAR

SEQUENCE NO.

THE STATE OF NEW JERSEY

VS.

RICHARD A KILLMER

2. I am aware of the facts above because: (Included, but not limited to: your observations, statements of eyewitnesses, defendant's admission, etc.)

Witness statements and video recordings

3. If victim was injured, provide the extent of the injury:

n/a

Certification:

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signed: DET. R BUTTIMORE LAW ENFORCEMENT OFFICER

Date: 05/24/2022

Affidavit of Probable Cause

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1/1/2017

Preliminary Law Enforcement Incident Report

COMPLAINT NUMBER				THE STATE OF NEW JERSEY VS. RICHARD A KILLMER	
0901	S	2022	000372		
COURT CODE	PREFIX	YEAR	SEQUENCE NO.		
BAYONNE CITY MUNICIPAL COURT 630 AVENUE "C" BAYONNE NJ 07002-0000 201-858-6934 COUNTY OF: HUDSON				ADDRESS: [REDACTED] [REDACTED] [REDACTED]	
# of CHARGES 1	CO-DEFTS	POLICE CASE #: 2022050332		DEFENDANT INFORMATION SEX: M EYE COLOR: HAZEL DOB: [REDACTED] DRIVER'S LIC. #: [REDACTED] DL STATE: NJ SOCIAL SECURITY #: [REDACTED] SBI #: [REDACTED] TELEPHONE #: [REDACTED] LIVESCAN PCN #: 099902000256	
COMPLAINANT DET. R BUTTIMORE NAME: 595 NEWARK AVENUE JERSEY CITY NJ 07306					

Purpose: The Preliminary Law Enforcement Incident Report (PLEIR) is intended to document basic information known to the officer at the time of its preparation. It is recognized that additional relevant information will emerge as an investigation continues. The PLEIR shall be in addition to, not in lieu of, any regular police arrest, incident, or investigation reports. Note that the PLEIR is specific to each defendant charged in an investigation.

- The charge was based on the observations/statements made by an eyewitness(es).
 - *The witness statement(s) were recorded via:
 - *Body-Worn Camera
 - *Stationhouse interview room camera
- The defendant made statements/admissions.
 - *It was recorded using:
 - *Other/Explain Actor Video Recording
- The defendant was known to the victim as:
 - *Other/Explain Co-worker
- Additional information relevant to the offense(s) charged: Computer Database Transaction Logs

Certification:

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signed: DET. R BUTTIMORE LAW ENFORCEMENT OFFICER

Date: 05/23/2022

Preliminary Law Enforcement Incident Report

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7/20/2018