



OFFICE OF THE COUNTY PROSECUTOR
COUNTY OF MONMOUTH

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ACTING MONMOUTH COUNTY PROSECUTOR

September 7, 2022

Resident

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Re: OPRA request dated September 4, 2022

Dear Resident,

This office received your records request dated September 4, 2022, via email and received by the records custodian on the same date. You requested the following:

Any arrest reports, CAD reports with narratives, preliminary law enforcement incident reports, complaint warrants, complaint summonses, affidavits of probable cause (the document used to detail the probable cause basis for a criminal complaint), indictments, plea forms, and judgments of conviction, pertaining to the following defendant: Scott Kologi (sentenced 6/30/22).

Your request is hereby denied in part. Your request for "preliminary law enforcement incident reports" is a request for a criminal investigatory record. N.J.S.A. 47:1A-1.1 defines a criminal investigatory record: A record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency, which pertains to any criminal investigation. "Criminal investigatory files include records involving all manner of crimes, resolved or unresolved, and include information that is part and parcel of an investigation, confirmed or unconfirmed." Janeczko v. New Jersey Department of Law and Public Safety, GRC Complaint Nos. 2002-79 and 2002-80, Analysis and Conclusion; Nance v. Scotch Plains Township Police Department Custodian of Record, GRC Complaint No. 2003-125. Police reports are not part of public record. R. 1:38-3(f)(3). Criminal investigatory records are exempt from disclosure in response to an OPRA request. N.J.S.A. 47:1A-1.1(1); North Jersey Media Group, Inc. v. Township of Lyndhurst, 229 N.J. 541 (July 11, 2017). Accordingly, your request for this item is denied.

You also submitted your request under the common-law. The common law right of access to public records is not absolute. Keddie v. Rutgers, State Univ., 148 N.J. 36, 50 (1997); Constantine v. Township of Bass River, 406 N.J. Super. 305, 322 (App. Div.), certif. denied, 200 N.J. 208 (2009). To obtain access to a public record under the common law, (1) the record must be a common-law public document; (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 and must outweigh the State's interest in preventing disclosure. Matter of N.J. Firemen's Ass'n

Obligation to Provide Relief Applications Under OPRA v. Doe, 230 N.J. 258, 281 (2017). Thus, unlike the OPRA, the common law takes into account the status of the person or entity requesting access to the documents and the reason for the request. K.L. v. Evesham Twp Bd. of Educ., 423 N.J. Super. 337, 359-60 (App. Div. 2011), certif. denied, 210 N.J. 108 (2012). The requestor bears the burden of demonstrating that his interest outweighs the countervailing interest in non-disclosure. See Sussex Commons Assoc., LLC v. Rutgers, 210 N.J. 531, 549 (2012). “Generally, the public’s interest in non-disclosure is based on the need to keep the information confidential. Where a claim of confidentiality is asserted, the applicant’s interest in disclosure is more closely scrutinized.” Keddie, 148 N.J. at 51; Matter of N.J. Firemen’s Ass’n, 230 N.J. at 281-82. In that context, courts consider whether “the demand for inspection is premised upon a purpose which tends to advance or further a wholesome public interest or a legitimate private interest.” Lastly, OPRA is a public disclosure statute and is not intended to replace or supplement the discovery of private litigants. Constantine, 406 N.J. Super. at 324-25; MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 545-46 (App. Div. 2005).

The deciding court may consider:

- (1) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government;
- (2) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed;
- (3) the extent to which agency self-evaluation, program improvement, or other decision making will be chilled by disclosure;
- (4) the degree to which the information sought includes factual data as opposed to evaluative reports of policymakers;
- (5) whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and
- (6) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials.

Southern New Jersey Newspapers, Inc. v. Township of Mt. Laurel, 141 N.J. 56, 73 (1995) (quoting Loigman v. Kimmelman, 102 N.J. 98, 113 (1986)); Ciesla v. New Jersey Dept. of Health and Senior Services, 429 N.J. Super. 127, 145-46 (App. Div. 2012)

The weighing of these common law factors support the non-disclosure of the documents related to this ongoing criminal investigation. You have not satisfactorily demonstrated why your interest outweighs the government’s interest in protecting the disclosure of the investigatory documents related to a criminal investigation. Accordingly, your common law request for these items related to an investigation in progress law is denied.

Enclosed are publicly available records relating to your request; including the arrest report(s), CAD report(s), complaint with probable cause affidavit, indictment, plea form and judgment of conviction; within our possession. Pursuant to N.J.S.A. 47:1A-5 and N.J. Court Rule

1:38-7, social security number, driver license numbers, vehicle license plate numbers, and victim address(es) have been redacted.

In the event of a clarification or appeal, this office reserves the right to raise any other ground for denial not raised in this response. The failure of this office to assert an exception or privilege at this time does not act as a waiver of any grounds for denial.

Very truly yours,

LORI LINSKEY
ACTING MONMOUTH COUNTY PROSECUTOR

/s/ *Janine N. DeLucia*

By: Janine N. DeLucia
Staff Attorney
OPRA Custodian of Records