



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

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November 18, 2020

Via email to: opra+request-17732-9ef953a1@requests.opramachine.com

Theo Karan

Re: Records request

Dear Mr. Karan:

Please accept this letter in response to your records request dated November 9, 2020. You indicated in your original email dated November 9, 2020 that this response should be delivered to you electronically via email utilizing the unique email address created for receiving replies to this request via opramachine.com, which is: opra+request-17732-9ef953a1@requests.opramachine.com. Accordingly, this response has been sent to that email address today, November 18, 2020.

You have requested documentation in the form of: "(1) Emails between Michael Testa and Harold B. Shapiro on 10/16/2018 (including any and all attachments) [As referenced in November 8, 2018 letter from Harold B. Shapiro to Michael Testa], (2) September 18, 2018 email/letter from Harold B. SHapiro to Michael Testa [As referenced in September 28, 2018 letter from Harold B. Shapiro to Michael Testa]".

With regard to request (1), please note that this is an invalid request for email documentation in that it states a date range and recipients, but does not provide a subject matter by which a search of email records may be conducted utilizing search terms. Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-08 (April 2010). However, in the interest of transparency, a search of this office's email records was conducted and every email matching the single day date range between your specified recipients have provided and has been attached as Responsive Record 1.

With regard to request (2), this request also fails to provide designated search terms in conformance with Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-08

(April 2010), however, a search of every record identifiable as having been sent on your specified date between your specified recipients has nevertheless been conducted and provided to you as attached Responsive Records 2 along with all attachments to those records.

Please note, however, that redactions were made from these attachments for the email dated September 18, 2018 at 4:28 P.M. for attachments labeled: "Luis Soto meds - Profitt.pdf", "Harry Gatanis meds - Profitt.pdf", "Kenneth Harden meds - Profitt.pdf", and "Norris Glass meds - Profitt.pdf", as these attachments are for each listed individual's medical records, which are exempt from release pursuant to the Open Public Records Act. N.J.S.A. 47:1A-1.1. Once more, OPRA custodians have an obligation to protect the reasonable privacy interests of citizens. See Executive Order 21 (McGreevey) (exempting from disclosure home addresses and telephone numbers of individual citizens); Executive Order 69 (Whitman); N.J.S.A. 47:1A-1 ("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"); North Jersey Media Group, Inc. v. Bergen County Prosecutor's Office, 405 N.J. Super. 386 (App. Div. 2009); Bernstein v. Borough of Allendale, GRC Complaint No. 2004-195 (July 2005); Faulkner v. Rutgers University, GRC Complaint No. 2007-149 (May 2008). Accordingly, the release of the medical records of these four individuals is denied pursuant to the reasonable privacy exemption for OPRA as well as the exemption for medical records.

With regard to physical correspondence in this matter not accessible via an electronic search of this Office's email records and refinable via the utilization of search terms provided as the relevant subject, your requests, to the extent that they request physical correspondence not identifiable via an electronic search, is denied in that it constitutes an open-ended search of this agency's files requiring substantial research and presenting an undue burden upon this Office. The Court held in MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005) that "[u]nder OPRA, agencies are required to disclose only 'identifiable' government records not otherwise exempt . . . In short, OPRA does not countenance open-ended searches of an agency's files." Id. at 549 (emphasis added). Bent, 381 N.J. Super. at 37, NJ Builders Assoc. v. NJ Council on Affordable Hous., 390 N.J. Super. 166, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009).

Once more, your request to the extent that it requests physical correspondence not identifiable via an electronic search is denied as it is overly burdensome, requiring significant research and on the basis that compliance would substantially disrupt the operations of this Office. If a request for access to a government record would substantially disrupt agency operations, a custodian may deny access to the records. N.J.S.A. 47:1A-5(g). See also Caggiano v. Borough of Stanhope, GRC Complaint No. 2006-220; Vessio v. NJ DCA, Division of Fire Safety, GRC Complaint No. 2007-188. As complying with this aspect of your requests would require thorough reading of every document within the possession of this office to determine whether it constitutes a correspondence regarding your referenced subject matter with regard to each request, compliance with this request would require research into the content of documents and would be substantially disruptive to the operation of this office.

Accordingly, to the extent that this portion of your requests can be accomplished via an automated search of email records, utilizing specified search terms to electronically locate records

specifically responsive to your requests, this request has been granted and responded to individually below. To the extent that your requests constitute an improper open-ended search of this agency's files for any written correspondence relating to a subject matter, this is not a specific request for an identifiable record, calls for substantial research into the content of records, and would otherwise present a substantial and undue burden upon this Office and is accordingly denied.

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 Clerk.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen C. Sayer", is written over the typed name.

Stephen C. Sayer [114352015]

Assistant Prosecutor

Alternate Records Custodian