



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

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June 5, 2023

Via email to: opra+request-43663-1axxxxxxx@xxxxxxxx.xxramachine.com.

Re: Records request

Dear Ms. Erin:

Please accept this letter in response to your records request dated May 23, 2023 and submitted via email. On June 1, 2023, an email was sent to you advising of the need for a reasonable seven day extension on the time frame for responding to your OPRA request in this matter. Your request is for the following records: "(1) Your offices procedure for grand jury presentation, including but not limited to: record keeping, overseeing judge documentation, witness list, evidence list, pre indictment conference notes, and other important information relating to your procedure. (2) Your offices procedures on reprimanded Prosecutors & Assistant Prosecutors that don't follow procedures. (3) Your offices procedure on complaints filed against a prosecutor or assistant Prosecutor. (4) Your offices procedures providing complaints filed against individuals in your office being supplied to the public through the OPRA. (5) Your offices procedure regarding probable cause warrants. (6) Your offices procedure about supplying probable cause warrants and affidavits in discovery. (7) Your offices procedure on making sure all incarcerated defendants are given court notices. (8) List of all Prosecutors and Assistant

Prosecutors that have become Special Deputy Prosecutors through the Attorney General's Office and the date of that appointment."

With regard to request (1), this office appears to have no responsive record. Please note that to the extent that this request is a request for information as to the procedures of this office and not a request for a specifically identifiable record that can simply be turned over in response to this request, this request is denied as posing a request for information and research instead of for a specifically identified document. Where you appear to be requesting information in the form of what this office's procedures are with regard to your specified subject matter, you have not named a specifically identifiable record and have instead requested that this records custodian obtain information and provide it to you. If a request does not name specifically identifiable records or is overly broad, a custodian may deny access pursuant to the following court decisions: MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Records custodians are required to search their files for responsive records, but not to conduct any research on behalf of the requestor. See Donato v. Tp of Union, GRC Complaint No. 2005-182, Analysis (February 28, 2007). Nor are custodians required to create new documents in response to requests.

Accordingly, to the extent that request (1) is a request calling for information or the creation of a new document outlining the procedures specified in this request, this request is denied on the basis of improperly calling for research not required of an OPRA custodian in order to identify information to which you are seeking and provide that information instead of calling for a

specifically identifiable record under the provisions of the Open Public Records Act. Once again, however, to the extent that this request is calling for any record in the possession of this office which reflects a set procedure comporting to the parameters of your request, this office appears to have no responsive record.

With regard to request (2), please find all responsive records attached as Responsive Record A. With regard to request (3), please find all responsive records attached as Responsive Record B. With regard to request (4), this office has no responsive record. As with the response to request (1), to the extent that request (4) is calling for the creation of a new record which sets out the procedural practice of this office with regard to your specified subject matter, this request is denied for failing to call for a specifically identifiable document and requiring research, which is not required of an OPRA custodian.

With regard to request (5), this request is denied as substantially overbroad, where your request is for any procedure "regarding" probable cause warrants. A custodian has no legal duty to research his/her records to locate records potentially responsive to such a request. Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); Gannett N.J. Partners LP v. Cnty. of Middlesex, 379 N.J. Super. 205, 212 (App. Div. 2005) (citing MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 546-49 (App. Div. 2005)) (OPRA requires party requesting access to a public record to specifically describe the document sought."); accord Spectraserv, Inc. v. Middlesex Cnty. Utilities Auth., 416 N.J. Super. 565, 578 (App. Div. 2010). MAG Entm't, LLC v. Div. of ABC, 375 N.J. Super. 534, 546 (App. Div. 2005); Bent v. Stafford Police Dep't, 381 N.J. Super. 30, 37 (App. Div. 2005); 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).

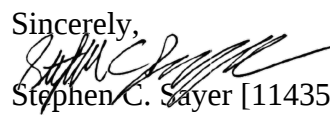
Once more, "A proper [OPRA] request 'must identify with reasonable clarity those documents that are desired.'" Burke v. Brandes, 429 N.J. Super. 169, 174 (App. Div. 2012) (quoting Bent v. Township of Stafford Police Dept., Custodian of Records, 381 N.J. Super. 30, 37 (App. Div. 2005)). Requests for general information that must be "analyzed, collated and compiled" by the custodian are not within the scope of OPRA. MAG Entm't, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 49 (App. Div. 2005). Moreover, requests that require a custodian to analyze and evaluate information in order to respond are improper. See Burke, 429 N.J. Super. at 174; see also Bent, 381 N.J. Super. at 33-39 (denying request for "entire file" of requester's criminal investigation because it neither identified nor described the records sought with any specificity or particularity); see also MAG, 375 N.J. Super. at 549 (request invalid for failing to provide any identifiers other than "a broad generic description of a brand or type of case prosecuted by the agency in the past"); and N.J. Builder's Ass'n v. N.J. Council on Affordable Hous., 390 N.J. Super. 166, 178-79 (App. Div.), certif. denied, 190 N.J. 394 (2007) (request for "any and all documents and data" invalid for requiring custodian rather than requester to identify the documents sought).

Accordingly, where request (5) appears to be calling for any procedure "regarding" probable cause warrants, this request is overbroad and calling for this records custodian to perform research as to every written procedure in the possession of this office in order to determine which conceivably "regard" probable cause warrants. In the interest of transparency, however, I have performed a search of this office's Standard Operating Procedures and this office appears to have no responsive record with regard to any Standard Operating Procedure record which explicitly regards the subject of simply probable cause warrants.

With regard to requests (6) and (7), this office has no responsive records. As with the response to request (1), to the extent that request (6) and request (7) are calling for the creation of a new record which sets out the procedural practice of this office with regard to your specified subject matter, this request is denied for failing to call for a specifically identifiable document and requiring research, which is not required of an OPRA custodian. In the interest of transparency, however, I would advise that it is this custodian's understanding that defendants are supplied with their court notices by the court that is issuing that notice, and not the Prosecutor's Office.

With regard to request (8), this office has no responsive record. As with the response to request (1), to the extent that request (8) is calling for the creation of a new record which provides the information that you are seeking, namely, a list of all Prosecutors and Assistant Prosecutors that have become Special Deputy Prosecutors through the Attorney General's Office and the date of that appointment, this request is denied for improperly calling for the creation of a new document instead of an existing record that can simply be turned over, which is not required of an OPRA custodian.

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