



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

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First Assistant Prosecutor

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October 27, 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 October 17, 2020 and received by this Office on April 19, 2020. You indicated in your original email dated October 17, 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, October 27, 2020.

You have requested documentation in the form of: (1) "Any and all correspondence and/or electronic communications between Jennifer Webb-McRae, Harold B. Shapiro, Christian E. Dutill, Andre R. Araujo and/or any other members of the Cumberland County Prosecutor's Office and Michael L. Testa Sr. and/or other employees of Testa Heck Testa & White pertaining to the case State of New Jersey v. Jeffrey Profitt, between April 2016 and September 2020" and (2) "Any and all correspondence between members of the Cumberland County Prosecutor's Office and members of the Millville Police Department pertaining to MPD officer Jeffrey Profitt's arrest of Kenneth Harden on June 15, 2015, between June 2015 and September 2020."

With regard to request (1), where your request names the specific case of State of New Jersey v. Jeffrey Profitt, all responsive records are attached. Please find all emails sent between all employees of the Cumberland County Prosecutor's Office and all employees of the law firm 'Testa, Heck, Testa & White' between April 1, 2016 and September 30, 2020 with regard to the defendant Jeffrey Profitt's criminal matter attached to this letter. Please also find all letter correspondence responsive to your request attached to this letter. Note that the search term "Jeffrey Profitt" was utilized in order to locate all responsive emails with regard to this request, and that this Office did

not perform research into the content of any emails for the purpose of determining which emails sent during your specified time period relate to any subject matter, but instead conducted an electronic search of this Office's email data utilizing the search term "Jeffrey Profitt" pursuant to the language of your request, as required pursuant to the Open Public Records Act for a request regarding emails. A review of each email responsive to this request was conducted for the purpose of identifying any OPRA-exempt materials contained within, and no redactions were made from any of the responsive emails in this matter. Due to the large file size of the responsive records in this matter in conjunction with your request that your responsive records be delivered to you electronically, all responsive records with regard to request (1) have been attached to this letter and sent to you via separate emails and labeled as attachments: "Responsive Records A", "Responsive Records B", and "Responsive Records C".

In response to request (2), with regard to all correspondence sent between the Cumberland County Prosecutor's Office and the Millville Police Department between June 1, 2015 to September 30, 2020, "pertaining to" an arrest of Kenneth Harden that was conducted by Jeffrey Profitt, this request does not name a specific case file and instead requests any correspondence that "pertains to" an arrest of an individual named Kenneth Harden by the officer Jeffrey Profitt.

With regard to physical correspondence in the possession of this Office responsive to request (2), this Office has no responsive records. The only identifiable case file wherein Kenneth Harden was the subject of an arrest that occurred on June 15, 2020 does not contain any physical correspondence materials between the Cumberland County Prosecutor's Office and the Millville Police Department.

With regard to email correspondence in the possession of this office that "pertains to" an arrest of Kenneth Harden that was conducted by Jeffrey Profitt, this is an improper, overly broad request for research that would require research into the content of emails in order to determine whether their subject matter "pertains to" an arrest matching the description your request provides. Where a request would require research into the content of records in order to find whether any records contain information relevant to your desired subject matter, your request is denied as it requires research in order to determine which records are responsive to your request rather than specifically naming a particular record, which is not required of a records custodian. See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (OPRA not intended to provide "a research tool ... to force government officials to identify and siphon useful information" for requesting parties); N.J.S.A. 47:1A-5(g); Reda v. Township of West Milford, GRC 2002-58 (January 17, 2003) (OPRA does not require record custodians to conduct research among its records for a requestor and correlate data from various government records in the custodian's possession). 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).

In the interest of transparency, however, a search of this Office's email data was conducted using the search term "kenneth harden". This search produced one thousand, one hundred and twelve responsive records. Thus, in order to determine which of these records "pertain to" any such arrest, a thorough examination as to the content of over a thousand records would be required in order to determine each record's applicability to your request. Once more, a review of each

responsive email would also need to be conducted in order to ensure that OPRA-exempt materials have been redacted from each email, which would further require an extensive review of over a thousand responsive records. Accordingly, this request is also denied on the basis of being unduly burdensome, requiring significant research and substantially disrupting the operations of this office. See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005) (OPRA not intended to provide “a research tool ... to force government officials to identify and siphon useful information” for requesting parties); N.J.S.A. 47:1A-5(g); Reda v. Township of West Milford, GRC 2002-58 (January 17, 2003) (OPRA does not require record custodians to conduct research among its records for a requestor and correlate data from various government records in the custodian’s possession). 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).

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", written over a horizontal line.

Stephen C. Sayer [114352015]

Assistant Prosecutor

Alternate Records Custodian