



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

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November 20, 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 30, 2020. An extension was requested in this matter on November 10, 2020. You indicated in your original email dated October 30, 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 20, 2020.

You have requested documentation of the form of:

"(1) Any and all emails and/or letters sent or received by Cumberland County Prosecutor's Office employees pertaining to the case CCPO PSU-16-0042 from January 1, 2016 to December 31, 2017 (including any and all attachments); (2) Any and all emails and/or letters sent or received by Cumberland County Prosecutor's Office employees pertaining to the case 17-02-118-I between June 1, 2016 and December 31, 2018 (including any and all attachments); (3) Any and all emails and/or letters sent or received by Cumberland County Prosecutor's Office employees pertaining to the case 18-10-943-I/B between June 1, 2018 and October 31, 2020 (including any and all attachments); (4) Any and all emails and/or letters sent or received by Cumberland County Prosecutor's Office employees pertaining to the case CCPO PSU-16-0021 from January 1, 2016 to December 31, 2017 (including any and all attachments); (5) Any and all emails and/or letters sent or received by Cumberland County Prosecutor's Office employees in 2018, 2019 and 2020 pertaining to Mickie McComb; (6) Any and all emails and/or letters sent or received by Cumberland County Prosecutor's Office employees in 2018, 2019 and 2020 pertaining to Richard Celeste.

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.

With regard to request (1), please find all responsive records to request (1) attached to this response as Responsive Record A and Responsive Record B, with redactions to the attachments to each as articulated below.

The attachment to the email dated November 1, 2016, 8:51 A.M. has been redacted, as it relates to an Internal Affairs investigation. This portion of your requested record is an internal affairs record, which would render such records exempt from the provisions of OPRA. OPRA's broad right to access is not absolute, but is instead limited by "established public-policy exceptions," stated in the statute, which declare "[a] government record shall not include... information which is deemed to be confidential." Gilleran v. Bloomfield, 227 N.J. 159, 170 (2016) (quoting N.J.S.A. 47:1A-1.1). Similarly in North Jersey Media Group v. Bergen County Prosecutor's Office, 447 N.J. Super. 182, 201-202 (App. Div. 2016) the Court recognized that the provisions of the Open Public Records Act specifically do not abrogate or erode existing exemptions to public access, including "regulation[s] promulgated under the authority of any statute or Executive Order of the Governor" or "any executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law". N.J.S.A. 47:1A-9.

Internal affairs investigations by law enforcement agencies fall under the supervision of the Attorney General, who is New Jersey's chief law enforcement officer. N.J.S.A. 52:17B-98.

The Guidelines of the Attorney General were adopted pursuant to N.J.S.A. 40A:14-181 mandating that every law enforcement agency in New Jersey adopt and implement guidelines consistent with the guidelines governing the "Internal Affairs Policy and Procedures". These guidelines "are binding upon local law enforcement agencies". Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark, 459 N.J. Super. 458, 500 (App. Div.), certif. granted, 240 N.J. 7 (2019). The Internal Affairs Guidelines specifically mandate that the resulting materials from internal investigations are confidential. IAPP § 9.6.1.

Accordingly, the Attorney General Guidelines within the Internal Affairs Policy and Procedures act with the force of law in rendering materials generated from internal investigations exempt from public access pursuant to the Open Public Records Act, as the Government Records Council has repeatedly held. Carmelo Lio v. Borough of Fairview (Bergen), GRC Complaint No. 2014-431 (November 2015), Wares v. Township of West Milford (Passaic), GRC Complaint No. 2014-274 (May 2015), Blaustein v. Lakewood Police Dep't (Ocean), GRC Complaint No. 2011-102 (June 2012), and Rivera v. Borough of Keansburg Police Dep't (Monmouth), GRC Complaint No. 2007-222 (June 2010). Rivera v. Union County Prosecutor's Office, 2020 WL 3397794.

The attachment to emails dated: January 10, 2017, 4:03 P.M.; 2:52 P.M.; 4:03 P.M.; 4:30 P.M.; 4:34 P.M.; 5:50 P.M.; 6:29 P.M.; 7:31 P.M.; 7:37 P.M.; 8:34 P.M.; 9:11 P.M.; January 11, 2017, 7:11 A.M., 7:44 A.M.; 8:22 A.M.; 8:27 A.M.; 11:16 A.M. have also been redacted, as this attachment is a draft of a PIRRF form in this matter, which stands for Pre-Indictment Review and Recommendation Form, which is an advisory and consultative record representing legal analysis of this case. Advisory and deliberative materials are exempt from disclosure pursuant to the statutory exemption from the Open Public Records Act for records that constitute inter-agency or intra-agency advisory, consultative, or deliberative material. N.J.S.A. 47:1A-1.1. See also In Re the Liquidation of Integrity Insurance Company, 165 N.J. 75 (2000) and Education Law Center v. NJ Department of Education, 198 N.J. 274 (2009). The record which you request reflects the analysis and deliberations that occur during the decision-making process with regard to a defendant's matter, and thus contains opinions, recommendations, and advice with regard to agency policies. The record ultimately reflects the State's reasoning with regard to its position regarding the defendant, which is exempt from disclosure pursuant to the statutory exemption.

The attachment to the email dated February 9, 2017, 10:38 A.M. has also been redacted, as it relates to an Internal Affairs investigation and is also a draft document of an indictment in this matter, which would constitute both an advisory/consultative record exempt from release under OPRA as well as an Internal Affairs record which is also exempt from release under the Open Public Records Act for the aforementioned reasons.

With regard to request (2), this request is denied as it constitutes an overly broad and unduly burdensome request, requiring significant research and on the basis that compliance would substantially disrupt the operations of this Office. An electronic search of this Office's records with regard to this request produces four hundred and seventy four potentially responsive records. Paired with request (3) in this matter, just these two requests alone produce six hundred and ninety one potentially responsive records for review. Accordingly, this request is overly broad in that it fails to specifically identify records by sufficiently narrowing parameters. Once more, compliance with this request would constitute a substantial disruption upon the operations of this office, as compliance with this request would require a thorough review of several hundred records.

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. Once more, 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). Accordingly, this request is denied on the basis of being overly broad and requiring substantial research.

With regard to request (3), this request is denied as it constitutes an overly broad and unduly burdensome request, requiring significant research and on the basis that compliance would substantially disrupt the operations of this Office. An electronic search of this Office's records with regard to this request produces two hundred and seventeen potentially responsive records. Paired with request (2) in this matter, just these two requests alone produce six hundred and ninety one potentially responsive records for review. Accordingly, this request is overly broad in that it fails to specifically identify records by sufficiently narrowing parameters. Once more, compliance with this request would constitute a substantial disruption upon the operations of this office, as compliance with this request would require a thorough review of several hundred records.

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. Once more, 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). Accordingly, this request is denied on the basis of being overly broad and requiring substantial research.

With regard to request (4), this office has no responsive records.

With regard to request (5), please find all responsive records attached as Responsive Record C, Responsive Record D, Responsive Record E, Responsive Record F and Responsive Record G, with redactions to the attachments to each as articulated below.

Attachments to the following emails have been redacted as they are for an expert report, which is exempt from release under the Open Public Records Act pursuant to the exemption for criminal investigatory records. These emails are dated: March 20, 2018, 12:33 P.M., April 5, 2018, 3:35 P.M., April 18, 2018, 9:09 A.M., May 2, 2018, 5:46 P.M., May 2, 2018, 3:18 P.M., June 12, 2019, 5:14 P.M., January 2, 2020, 12:31 P.M., December 31, 2019, 12:02 P.M., December 22, 2019, 2019, 8:31 A.M., October 8, 2019, 11:06 A.M., October 8, 2019, 10:18 A.M., October 4,

2019, 9:51 A.M., June 13, 2019, 8:47 A.M. Criminal investigatory records are exempt from OPRA. Furthermore, a criminal investigatory record remains exempt from disclosure even after the criminal investigation has been closed. Donna Janeczko v. New Jersey Department of Law and Public Safety, Division of Criminal Justice, Custodian of Record, GRC Complaint Nos. 2002-79 and 2002-80; Andrew Johnson/Press of Atlantic City v. New Jersey Division of State Police, Custodian of Record, GRC Complaint No. 2004-46. With regard specifically to whether expert reports constitute criminal investigatory records exempt from OPRA, the Government Records Council has previously held that expert reports constitute criminal investigatory records and are appropriately exempt from release pursuant to the Open Public Records Act. GRC Complaint No. 2012-193; James Kellinger. v. Bergen County Prosecutor's Office. Accordingly, that portion of your request is denied. Please find the remaining responsive records and attachments included with this response as Responsive Record C, Responsive Record D, Responsive Record E, Responsive Record F and Responsive Record G.

With regard to request (6), please find all responsive records attached as Responsive Record H, with redactions to the attachments to each as articulated below.

Attachments to the following emails have been redacted as they are for an expert report, which is exempt from release under the Open Public Records Act pursuant to the exemption for criminal investigatory records. These emails are dated: August 24, 2018, 2:40 P.M., January 2, 2020, 3:25 P.M., January 2, 2020, 12:31 P.M. Criminal investigatory records are exempt from OPRA. Furthermore, a criminal investigatory record remains exempt from disclosure even after the criminal investigation has been closed. Donna Janeczko v. New Jersey Department of Law and Public Safety, Division of Criminal Justice, Custodian of Record, GRC Complaint Nos. 2002-79 and 2002-80; Andrew Johnson/Press of Atlantic City v. New Jersey Division of State Police, Custodian of Record, GRC Complaint No. 2004-46. With regard specifically to whether expert reports constitute criminal investigatory records exempt from OPRA, the Government Records Council has previously held that expert reports constitute criminal investigatory records and are appropriately exempt from release pursuant to the Open Public Records Act. GRC Complaint No. 2012-193; James Kellinger. v. Bergen County Prosecutor's Office. Accordingly, that portion of your request is denied. Please find the remaining responsive records and attachments included with this response as Responsive Records H.

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,



Stephen C. Sayer [114352015]

Assistant Prosecutor

Alternate Records Custodian