



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

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First Assistant Prosecutor

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December 2, 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 follow up records requests dated November 23, 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, December 2, 2020.

You have requested documentation in the form of: (1) a PDF listing the responsive results to requests (2) and (3) from your previous request dated October 30, 2020 and (2) "Any and all electronic communications sent or received by Jennifer Webb-McRae, Harold B. Shapiro, Christian E. Dutill, Andre R. Araujo and/or any other members of the Cumberland County Prosecutor's Office pertaining to "Jeffrey Proffit" or "Jeffrey E Proffit," between April 1, 2016 and August 31, 2017. [N.B. Please note spelling of "Proffit," with two Fs and one T.]"

With regard to request (1), this request is denied in that it calls for the creation of a new record in response to a request posed under the Open Public Records Act. A custodian is not required to create a record in response to a complainant's OPRA request. Librizzi v. Township of Verona Police Department, GRC Complaint No. 2009-213 (August 2010). Furthermore, 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). While a custodian is obligated to search his or her files to find the identifiable government records listed in a Complainant's OPRA request, a custodian is not required to research his or her files to figure out which records, if any, may be responsive to a broad OPRA request. See. Donato v. Township of Union, GRC Complaint No. 2005-182 (February 2007). As your request does not request a specific record within the possession of this Office but instead requests the creation of a new record in response to your request, this request is denied in that it fails to name a record in the possession of this Office and calls for the creation of a new record, which is not permitted under OPRA.

With regard to request (2), please find all responsive records attached, noting that the search terms "Jeffrey Proffit" and "Jeffrey E Proffit" were utilized in order to conduct an electronic search of this Office's email records, and that no research was done into the content of said records. Those records are attached to this response as Responsive Records A.

Please note, however, that redactions were made from the attachment to one email, dated December 15, 2016, 2:50 P.M., as the attachment to this email was a PIRRF form, 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). This redacted record thus 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 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