



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

Harold B. Shapiro
First Assistant Prosecutor

Richard E. Necelis
Chief of Investigators

115 Vine Street
Bridgeton, New Jersey 08302
Telephone (856)453-0486
Fax (856)451-1507

December 11, 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 December 2, 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 11, 2020.

You have requested documentation in the form of: "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 September 1, 2017 and May 31, 2018. [N.B. Please note spelling of "Proffit," with two Fs and one T.]"

With regard to this request, 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. Please note that with regard to the email dated December 19, 2017 at 9:07 A.M., both attachments to this email are the same single record, which was simply attached to the email twice, once in Word form and a second time in PDF form. The attached record has accordingly only been provided along with this email once. This is also the case for the email dated December 20, 2017 at 2:24 P.M., where although the email lists two attachments, this is in fact only one attachment that has been attached to the email in both Word and PDF form, and this single attachment has been provided in this response.

Please note as well that the following redactions were made to the attached responsive records: To the emails dated March 19, 2018 at 11:37 A.M. as well as March 19, 2018 at 11:13 A.M., the attachments have been redacted because these attachments are draft versions of a legal brief in this matter, 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.

To the email dated March 2, 2018 at 9:20 A.M., a responding email dated March 2, 2018 at 9:34 A.M. has been redacted, as this email is a deliberative and advisory email stating the legal analysis of the State with regard to the transcript attached to the March 2, 2018 at 9:20 A.M. email. 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). Furthermore, an email dated March 2, 2018 at 12:11 P.M., along with attachments has been redacted because it relates to a Grand Jury proceeding, and "records relating to grand jury proceedings," are excluded from public access. N.J.S.A. 47:1A-6; N.J.S.A. 47:1A-9(a); R. 1:38-3 (c)(4); Byrnes v. Morris Cnty. Prosecutor's Office, GRC Complaint No. 2009-323 (June 2011). The attachments to this email include a transcript of a grand jury proceeding, which has been redacted for the above stated basis, as well as an attachment titled "Profitt - Powerpoint.pdf", which has been withheld because this attachment is a powerpoint containing the scanned pages of the investigation report in this matter, which is a criminal investigatory record. 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.

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", with a stylized flourish at the end.

Stephen C. Sayer [114352015]

Assistant Prosecutor

Alternate Records Custodian