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December 15, 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 December 4, 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 15, 2020.

You have requested documentation in the form of: electronic communications in the form of: (1) 1/31/2018 8:19 Andre Araujo <[email address]> Danielle Pennino <[email address]> Profitt docs (break in case of Harold); (2) 9/24/2018 9:45 "Loteck, Anthony" <[email address]> Ronald Cuff <[email address]> FW: Use of force breakdown by year and officer 2016-2016.

With regard to request (1), please find all responsive records attached to this response. The email itself has been titled Responsive Record A. Each individual attachment other than the redacted attachments referenced below are attached to this response with their original title and in separate files. Please note, however, that redactions have been made from the attachments to this specified email.

The attachment titled: "Letter Reply to Reconsideration Motion.docx" has been withheld as it is a draft of the State's legal brief in this matter which constitutes an deliberative and advisory record that is exempt from the provisions of the Open Public Records Act. 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. As previously noted, this attachment is not of a filed-stamped brief filed with the Court, but of a draft document. Accordingly, this record is exempt from release under OPRA.

The attachments titled "cases.txt" and "choice quotes.docx" have also been redacted as advisory and deliberative records. These records appear to be text documents wherein the State, as part of its preparation in this matter, retained a list of cases and notes with regard to its analysis in this matter. As advisory and deliberative materials are exempt from release under OPRA for the aforementioned reasons, this record has been redacted.

With regard to request (2), this request is denied because the email you specified along with its attachment constitute criminal investigatory records, internal affairs records, and personnel records, in that this record is an informal list of officers' names paired with specific prior criminal matters and use of force incidents. 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.

Once more, this 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.), cert. 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. Accordingly, this record would be exempt from release pursuant to OPRA as an internal affairs record.

Once more, these records are personnel records that are exempt from release under the Open Public Records Act. In the matter of Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-117 (June 2010), it was held that disciplinary history for a Trenton PD Detective was exempt from public access as a personnel record pursuant to N.J.S.A. 47:1A-10. Accordingly, where the email you request and its attachment contain a list of use of force incidents with regard to individual officers, this record would also constitute a personnel record exempt from release under OPRA.

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