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August 21, 2025

Via email opra+request-79574-62d1c6c2@requests.opramachine.com
James Buford

Re. Request for Public Records

Dear Mr. Buford:

This is in response to your request for public records pursuant to the *Open Public Records Act* dated August 15, 2025, and in which you requested:

- Arrest/Summons statistics for the BCPO Crime Suppression Task Force from 11/1/2024-1/1/2025

First, this request is not proper, in that it is vague, overly broad and fails to name specific documents to be released. See *Bent v. Stafford Police Department*, 381 N.J. Super. 30, 37 (App. Div. 2005). Please note the *Open Public Records Act* (OPRA) provides for access to specifically identifiable government records and generally not requests for categories of information. *MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534 (App. Div. 2005). To the extent your request broadly seeks statistics limited only by reference to a task force it is grossly vague and overboard and/or requires improper research beyond the responsibilities of a custodian under OPRA and is therefore denied. See also, *New Jersey Builders Association v. New Jersey Council on Affordable Housing*, 390 N.J. Super. 166, 180 (App. Div. 2007). Further, to be considered a public record, it must be shown that the document was "made, maintained, kept or received by a public employee or public entity in the scope of official business. Accordingly, a valid OPRA request should direct attention to a statute or other mandate requiring the records sought to be maintained before the records should be disclosed. Here, the Bergen County Prosecutor's Office does not file or categorize its cases in the format requested and OPRA does not require an agency to create a record in response to a request



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Second, the request is denied on the separate and independent ground that a custodian is not required to conduct significant research of agency's files to figure out which records, if any, might be responsive to a broad and unclear OPRA request. See *MAG Entertainment, LLC v. Division of Alcohol Beverage Control*, 375 N.J. Super. 534 (App. Div. 2005). In *MAG*, the court held that "[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying, or examination.' *N.J.S.A.* 47:1A-1." (Emphasis added.) The court further held 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." (Emphasis added). *Id.* at 549. In this instance, this Office has no central registry, database or file capturing the broad categories of information you seek. The only way to determine whether such categories of information exist would be to manually search all felony files maintained by this Office for the subject period for the 70+ plus enforcement agencies operating in Bergen County. This task would invariably need to be performed by an attorney or attorneys or other skilled personnel and would necessarily entail a special service charge. Clearly, that would constitute impermissible research as contemplated in *MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534 (App. Div. 2005).

In *Carter v. New Jersey Dep't of Community Affairs*, 2019 WL 6713293 (N.J. App. Div. Dec. 10, 2019), an OPRA request was submitted for "complete copies of any and all 'Notice of Docketing' records" issued by the Appellate Division, resulting from an appeal pursuant to *N.J.S.A.* 40A:9-22.9 of any final agency decision of the Local Finance Board, for a five year period between 2011 and 2016. The agency explained that neither it nor its databases organized or listed matters based on the description the requestor had provided, and the requestor had provided no case names, party names, or docket numbers. Consequently, the custodian would need to manually identify cases, locate records in storage, and manually review each potentially applicable case file for responsive records. The agency denied the request on the ground that fulfilling the request would require the custodian to exercise judgment and conduct research. *Id.* at *1.

The General Records Council denied the requestor's challenge to the denial and the Appellate Division affirmed. The Appellate Division distinguished between a search for records, which a custodian is required to do under OPRA, and research, which is beyond the ambit of OPRA. *Id.* at *3. Noting that the agency did not maintain a database or list of records responsive to the request for Notices of Docketing, the Appellate Division held that the custodian would have to "search through thousands of cases to identify documents relevant to the request" – it would have to both "exercise discretion" and "undertake research." Citing *MAG Entm't, LLC v. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534 (App. Div. 2005), the court held that "[r]equests for general information – like here – that must be 'analyzed, collated and compiled' by the agency are outside the scope of OPRA." The court further indicated:

As [the requestor] emphasized during oral argument before us, he specified a subject and the relevant timeframe, but he did include a case name, party name, or docket number. The failure to include these identifiers would have forced the custodian to research and manually

identify the documents. Like in *N.J. Builders [Ass'n. v. New Jersey Council on Affordable Housing]*, 390 N.J. Super. 166, 172 (App. Div. 2007),] this request for "any and all" information placed the burden on the custodian to locate germane documents, which is improper. *Id.* at *4.

Your request for class of records in unspecified cases except by task force is materially the same as *Carter*. Like the public agency in *Carter*, my Office does not organize or list matters based on the description you provided. As in *Carter*, your requests include a broad type of document but no case name, party name, docket number -- placing the burden on this Office to research countless files to determine whether the germane documents might be contained therein. Like in *Carter*, this Office has no obligation to exercise judgment in trying to circumscribe the universe of relevant files, locate them, and then manually review each potentially applicable case for responsive records. Your request is invalid and denied. I note that, while *Carter* is an unpublished case, it applied settled New Jersey law, as evidenced by its citations to *MAG, N.J. Builders, Bent v. Township of Stafford Police Dep't*, 381 N.J. Super. 30 (App. Div. 2005), *Burke v. Brandes*, 429 N.J. Super. 169 (App. Div. 2012), and *Burnett v. County of Gloucester*, 415 N.J. Super. 506 (App. Div. 2010).

Notwithstanding the above infirmities or waiving the objections cited above, this Office does not maintain a public record responsive to your request as styled. See *Williams v. Passaic County Prosecutor's Office*, GRC Complaint No. 2014-297 (finding that where "no records responsive to the request exist, no unlawful denial of access occurred). Whether you may request records from local police departments is an issue which you may wish to explore.

In the event there is an appeal or review of this response, the Bergen County Prosecutor's Office also reserves the right to raise any other ground for denial not raised in this response. The failure of the Bergen County Prosecutor's Office to assert an exception or privilege does not act as a waiver of any ground for denial.

You have a right to appeal the decision that the document or documents are not public records or are otherwise exempt from disclosure. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council ("GRC") by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at PO Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The Council can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your county.

Very truly yours,

MARK MUSELLA
Bergen County Prosecutor

Maria Fagliarone/s/

Maria Fagliarone
Assistant Records Custodian