



UNION COUNTY PROSECUTOR'S OFFICE
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March 8, 2021

John Kaczor
Via email to opra+request-20414-894ac3da@requests.opramachine.com

Re: OPRA Request 160-2021 (Reports & Complaints)

Dear Mr. Kaczor:

This letter is in response to your above-referenced request for certain records pursuant to the Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 to 47:1A-13, and the common law right of access to public documents. During the present declared state of emergency, our Office has made a reasonable effort to respond to your request as soon as practically possible. See N.J.S.A. 47:1A-5(i)(2). We appreciate your patience and understanding.

Specifically, for the period of January 2018 through February 2021, you sought the following:

1. "any and all criminal complaints with the names John Kaczor, John M. Kaczor, Peter A. Brown, Peter Brown"; and
2. "any all police reports or reports in general filed with the union county prosecutor's office containing the names John M. Kaczor, John Kaczor, Peter A. Brown, Peter Brown".

As to Item 1, we interpret your request as one seeking criminal complaints naming the individuals indicated as defendants.¹ Please be advised that we have no records responsive to this request.

As to item 2, this request is vague, overbroad, and as a result, invalid. This Office does not maintain a global, searchable index of every name that appears on every report prepared by our investigators or submitted to us by members of other law enforcement agencies.

To be valid, an OPRA request must state "a specific subject matter that [is] clearly and reasonably described with sufficient identifying information[.]" *Burke v. Brandes*, 429 N.J. Super. 169, 176 (App. Div. 2012). Moreover, a proper OPRA request does not require a custodian to exercise discretion, survey employees or undertake research to comply with it. Your request would require us to manually search through thousands of case files, locate records in storage, obtain those records,

¹ If our interpretation is incorrect, kindly clarify your request.

and review every item in each potentially applicable case file to identify and compile responsive records. This effort would constitute research, not a search, [*Burnett v. Cty. of Gloucester*, 415 N.J. Super. 515 (App. Div. 2010)], "which goes beyond what OPRA requires." *Carter v. N.J. Dep't of Cmty. Affairs*, No. A-0483-18T1, 2019 N.J. Super. Unpub. LEXIS 2510, *9-*10 (App. Div. Dec. 10, 2019).

Even if your request was cognizable, a portion, at least, of what you appear to seek are records related to someone who has neither been arrested nor charged with committing an offense in Union County. In essence, this amounts to inquiring whether such a person is, or has been, the subject of an investigation. This Office will neither confirm nor deny whether an individual who has neither been charged nor arrested in Union County is, or has been, the subject of an investigation here. Law enforcement agencies routinely receive allegations that are determined to be unprovable, unfounded or untrue. Identifying the target of such allegations could unfairly subject that individual to irreparable harm and subject this Office and its employees to civil liability and professional discipline. *North Jersey Media Group, Inc. v. Bergen County Prosecutor's Office*, 447 N.J. Super. 182, 189 (App. Div. 2016); N.J.S.A. 47:1A-9(b).

In sum, this Office has no responsive records as to item 1, and your request in item 2 is denied on the grounds that (a) it is invalid, and (b) even if it was valid, we would neither confirm nor deny the existence of records relating to an individual who has not been charged or arrested in Union County.

I note that you have also requested these materials pursuant to the common law right of access. A person seeking public records under the common law must make a greater showing than that which is required under OPRA. Specifically, the requestor must establish (1) an interest in the subject matter of the materials sought, and (2) that their interest in obtaining the materials outweighs the public interest in preventing disclosure. See *Mason v. City of Hoboken*, 196 N.J. 51, 67-68 (2008) and cases cited therein. See also *North Jersey Media Grp., Inc. v. Township of Lyndhurst*, 229 N.J. 541, 578-81 (2017).

In this regard, as to item 1, we have no responsive records. As to item 2, your request is equally invalid under the common law.

Returning to the subject of your OPRA request, the Union County Prosecutor's Office reserves the right to raise any other ground for denial not raised in this response. The failure of the Union County Prosecutor's Office to assert an exemption or privilege herein does not constitute 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 may challenge the decision of this Office to deny access by either instituting a proceeding in the Superior Court of New Jersey or filing a complaint with the Government Records Council ("GRC"). You may contact the GRC by telephone at 866-850-0511, by mail at P.O. 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.

With this letter, the Union County Prosecutor's Office considers your OPRA request to be completed and closed.

John Kaczor
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Very truly yours,

LYNDSAY V. RUOTOLO
Acting Prosecutor of Union County

A handwritten signature in black ink, appearing to read "Robert J. Rosenthal". The signature is fluid and cursive, with the first name "Robert" being more prominent.

By: Robert J. Rosenthal
Special Deputy Attorney General/
Acting Assistant Prosecutor

RJR/
c Marlena M. Russo (via email)
Mark Spivey (via email)
April Bauknight, Esq. (via email)
Barbara Sullivan (via email)