



**OFFICE OF THE COUNTY PROSECUTOR
COUNTY OF MONMOUTH**

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RAYMOND S. SANTIAGO
ACTING MONMOUTH COUNTY PROSECUTOR

November 18, 2022

Bryan Bender

Bryan Bender <opra+request-36590-0abc4e43@requests.opramachine.com>

Re: OPRA request dated November 13, 2022

Dear Mr. Bender,

This office received your records request under OPRA and common law dated November 13, 2022, via email and received by the records custodian on the same date. You requested the following:

All emails between Det. Migliorisi, Monmouth County Prosecutors Office and and Det. Redline, Middlesex County Prosecutors Office between March 9, 2022 and November 12, 2022. Please include attachments.

Enclosed are publicly available email records relating to your request. The records you requested have been redacted. The basis for redactions are based in part off of the Advisory, consultative or deliberative and such records are exempt from public access. Inter-agency or intra-agency advisory, consultative or deliberative material are protected from disclosure via the "deliberative process" privilege, which permits the government to withhold information that reflect advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions are formulated. Education Law Ctr. v. N.J. Dept. of Educ., 198 N.J. 274 (2009); *See also* N.J.S.A. 47:1A-1.1 (definition of "government record" "shall not include inter-agency or intra-agency advisory, consultative or deliberative material.") In re the Liquidation of Integrity Ins. Co., 165 N.J. 75 (2000); O'Shea v. West Milford Bd. of Educ., 391 N.J. Super. 534 (App. Div. 2007), certif. denied 192 N.J. 292 (2007); Gannett New Jersey Partners, LP v. County Of Middlesex, 379 N.J. Super. 205 (App. Div. 2005); In re Readoption with Amendments of Death Penalty Regulations N.J.A.C. 10A:23, by the N.J. Dep't of Corr., 367 N.J. Super. 61 (App. Div.), certif. denied, 182 N.J. 149 (2004).

You also submitted your request under the common-law. The common law right of access to public records is not absolute. Keddie v. Rutgers, State Univ., 148 N.J. 36, 50 (1997); Constantine v. Township of Bass River, 406 N.J. Super. 305, 322 (App. Div.), certif. denied, 200 N.J. 208 (2009). To obtain access to a public record under the common law, (1) the record must be a common-law public document; (2) the person seeking access must establish an interest in the subject matter of the material, and (3) the citizen's right to access must be balanced against

and must outweigh the State's interest in preventing disclosure. Matter of N.J. Firemen's Ass'n Obligation to Provide Relief Applications Under OPRA v. Doe, 230 N.J. 258, 281 (2017). Thus, unlike the OPRA, the common law takes into account the status of the person or entity requesting access to the documents and the reason for the request. K.L. v. Evesham Twp Bd. of Educ., 423 N.J. Super. 337, 359-60 (App. Div. 2011), certif. denied, 210 N.J. 108 (2012). The requestor bears the burden of demonstrating that his interest outweighs the countervailing interest in non-disclosure. See Sussex Commons Assoc., LLC v. Rutgers, 210 N.J. 531, 549 (2012). "Generally, the public's interest in non-disclosure is based on the need to keep the information confidential. Where a claim of confidentiality is asserted, the applicant's interest in disclosure is more closely scrutinized." Keddie, 148 N.J. at 51; Matter of N.J. Firemen's Ass'n, 230 N.J. at 281-82. In that context, courts consider whether "the demand for inspection is premised upon a purpose which tends to advance or further a wholesome public interest or a legitimate private interest." Lastly, OPRA is a public disclosure statute and is not intended to replace or supplement the discovery of private litigants. Constantine, 406 N.J. Super. at 324-25; MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 545-46 (App. Div. 2005).

The deciding court may consider:

- (1) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government;
- (2) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed;
- (3) the extent to which agency self-evaluation, program improvement, or other decision making will be chilled by disclosure;
- (4) the degree to which the information sought includes factual data as opposed to evaluative reports of policymakers;
- (5) whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and
- (6) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials.

Southern New Jersey Newspapers, Inc. v. Township of Mt. Laurel, 141 N.J. 56, 73 (1995) (quoting Loigman v. Kimmelman, 102 N.J. 98, 113 (1986)); Ciesla v. New Jersey Dept. of Health and Senior Services, 429 N.J. Super. 127, 145-46 (App. Div. 2012)

The weighing of these common law factors support the non-disclosure of the documents related to this ongoing criminal investigation. You have not satisfactorily demonstrated why your interest outweighs the government's interest in protecting the disclosure of these intra-agency advisory, deliberative and consultative records. Accordingly, your common law request for these items is denied.

Should you disagree with this determination, you may appeal to the Government Records Council or the New Jersey Superior Court as provided by N.J.S.A. 47:1A-6 and 7. In the event of a clarification or appeal, this office reserves the right to raise any other ground for denial not

raised in this response. The failure of this office to assert an exception or privilege at this time does not act as a waiver of any grounds for denial.

Very truly yours,

RAYMOND S. SANTIAGO
ACTING MONMOUTH COUNTY PROSECUTOR

/s/ *Janine N. DeLucia*

By: Janine N. DeLucia
Staff Attorney
OPRA Custodian of Records