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April 17, 2023

Erin

opra+request-41054-92ee032f@requests.opramachine.com

Re: Open Public Records Act (OPRA) request - Emails and Email log

Dear Erin:

This Office is in receipt of your OPRA request dated March 22, 2023. Please be advised that the emails requested in Items 2 through 5 of your request consist of intra-agency advisory, consultative or deliberative material and, as such, they are exempt from release under OPRA pursuant to N.J.S.A. 47:1A-1.1, et seq. Therefore, your request for these emails is denied.

With regard to Item 1, wherein you request: "Email log of Taylor Toscano, in date order, from January 1, 2017 to March 21, 2023, showing 'To and From', 'Subject' and all included individuals," please be advised that this request requires this Office to review an email log consisting of 42,416 items. The

process of reviewing these items to determine what items are subject to disclosure versus those to be redacted will require time-consuming review and legal analysis. This process is sufficiently extraordinary to warrant imposition of a special service charge pursuant to N.J.S.A. 47:1A-5c. Before undertaking to provide you with the email log to which you are entitled, we need clarification from you as to whether you are willing to pay the service charge.

We would anticipate that various portions of the email log would need to be redacted. It is for you to determine whether the unredacted portion would be of sufficient interest to you to justify paying a service charge for it.

As we must be, this Office is willing to grant your OPRA and common law requests and disclose to you that information to which you are entitled under the law. Determining what must be disclosed versus redacted would require attorney review for exceptions under OPRA and evaluation under the common law right of access.

N.J.S.A. 47:1A-5c authorizes a "public agency to impose a 'special service charge' if a response to a request for production of government records will involve an 'extraordinary expenditure of time and effort,'" so long as the charge is "reasonable" and based on the "actual direct cost" of accommodating the request. Fisher v. Division of Law, 400 N.J. Super. 61, 65, 69 (App. Div. 2008) (quoting N.J.S.A. 47:1A-5c).

It is conservatively estimated that satisfaction of your public records request will take approximately 25 hours. This far exceeds the amount of time required to respond to a typical OPRA request. Based upon the fact that the email log in question consists of 42,416 items, we maintain that the effort necessary to accommodate your OPRA request is "substantial," "extensive" and "extraordinary" enough to justify the charging of a service fee.

A special service charge must be "reasonable" and "based upon the actual direct cost of providing" the record. N.J.S.A. 47:1A-5c & d. I cannot tell you exactly how much the service charge will be until the time to satisfy your public record request is actually expended. If it takes 25 hours, the fee would be \$859.75. See Fisher, 400 N.J. Super. at 61.

We would like to make the position of this Office clear. Our position is not that, every time there is a public record request for email logs there will be a special service charge assessed. We also are not imposing a special service charge because overtime would be required to meet the 7-day OPRA deadline in this case. The service charge would be imposed here in light of the fact that it involves a request for a voluminous amount of records that require multiple redactions; therefore, the time to review and redact these records is obvious and very reasonably anticipated.

Please advise the undersigned as to whether you would like us to move forward with the redaction process, or whether you would

like to withdraw your public record request for the email log. We also remain receptive to reaching a reasonable solution with you regarding these records that accommodates both of our interests. N.J.S.A. 47:1A-5g.

Should you disagree with our decision, please contact us in writing with your concerns so that we may consider them. If I can be of further assistance, please do not hesitate to contact me directly at (732) 929-2027, x3135.

Yours very truly,

Dina R. Khajezadeh

Dina R. Khajezadeh
Assistant Prosecutor