OFFICE OF THE COUNTY PROSECUTOR
COUNTY OF MONMOUTH

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RAYMOND S. SANTIAGO
MONMOUTH COUNTY PROSECUTOR

June 10, 2024

Peter Baker
opra+request-59801-a32d456d@requests.opramachine.com

Re: OPRA request dated March 21, 2024

Dear Mr. Baker:

This office received a records request from you via email dated Thursday, March 21, citing the New Jersey Open Public Records Act (OPRA) and the common-law right of access. Specifically, you requested the following records:

"1. Emails to and from Michael J. Wojciechowki from December 1, 2019 to March 21, 2024 regarding Bryan Alintoff and/or Rachel Alintoff including the TO, FROM, SUBJECT, DATE, TIME and all copied individuals as well as all attachments. Please put in a PDF format;

2. Emails to and from Eric Singer from December 1, 2019 to March 21, 2024 regarding Bryan Alintoff and/or Rachel Alintoff including the TO, FROM, SUBJECT, DATE, TIME and all copied individuals as well as all attachments. Please put in a PDF format;

3. Emails to and from Michele Tucker from December 1, 2019 to March 21, 2024 regarding Bryan Alintoff and/or Rachel Alintoff including the TO, FROM, SUBJECT, DATE, TIME and all copied individuals as well as all attachments. Please put in a PDF format;

4. Emails to and from Charles Trucillo from December 1, 2019 to March 21, 2024 regarding Bryan Alintoff and/or Rachel Alintoff including the TO, FROM, SUBJECT, DATE, TIME and all copied individuals as well as all attachments. Please put in a PDF format;

5. Emails to and from Raymond Santiago from December 1, 2019 to March 21, 2024 regarding Bryan Alintoff and/or Rachel Alintoff including the TO, FROM, SUBJECT, DATE, TIME and all copied individuals as well as all attachments. Please put in a PDF format;

6. Emails to and from Marc Lemieux from January 1, 2014 to August 1, 2017 regarding Bryan Alintoff, Rachel Alintoff and Tamara Wilson-Seidle and Philip Samuel Seidle including the TO, FROM, SUBJECT, DATE, TIME and all copied individuals as well as all attachments. Please put in a PDF format;

7. Emails to and from Thomas Fichter from December 1, 2019 to March 21, 2024 regarding Bryan Alintoff and/or Rachel Alintoff including the TO, FROM, SUBJECT, DATE, TIME and all copied individuals as well as all attachments. Please put in a PDF format;

8. Emails to and from Lori Linskey from December 1, 2019 to March 21, 2024 regarding Bryan Alintoff and/or Rachel Alintoff including the TO, FROM, SUBJECT, DATE, TIME and all copied individuals as well as all attachments. Please put in a PDF format; (and)

9. Emails to and from Tara McClelland from December 1, 2019 to March 21, 2024 regarding Bryan Alintoff and/or Rachel Alintoff including the TO, FROM, SUBJECT, DATE, TIME and all copied individuals as well as all attachments. Please put in a PDF format."

If you'll recall, on two separate occasions, Thursday, March 28 and Thursday, April 11, we noted that your request required additional time beyond the statutory seven (7) business days to fulfill, specifically due to an extremely high volume of potentially responsive records. OPRA allows custodians to seek extensions of time pursuant to *N.J.S.A.* 47:1A-5.i. Specifically, OPRA states that "the requestor shall be advised by the custodian when the record can be made available." Your patience in this matter has been appreciated.

Turning first to the common-law prong of your request, each such request must be subject to a balancing test, in which the requestor's interest in obtaining the requested records is weighed against the record stewards' interest in maintaining their confidentiality. In the absence of a clearly articulable interest on the part of the requestor, however, as is this case here, your common-law request is respectfully denied.

Turning to the OPRA prong of your request, attached to this email please find a PDF featuring all records in our possession determined to be responsive to your request under OPRA. Please note that many responsive records appear multiple times, as there was often significant overlap between email communications involving multiple individuals you cited in your search parameters.

The body of certain emails appearing in the PDF have been redacted nearly in their entirety because they nearly exclusively constitute materials OPRA exempts from disclosure, specifically because they contain, in the applicable statutory language, "inter-agency or intra-agency advisory, consultative or deliberative material." Please note that this exemption also pertains to "all attachments" to emails falling under this definition, as elucidated in the language of your request.

Government Records Council Final Decision No. 2007-164, *Hardwick v. NJ Department of Transportation,* elucidates this exemption more thoroughly, noting that "It is evident that this phrase is intended to exclude from the definition of a government record the types of documents that are the subject of the 'deliberative process privilege.'"

To quote from the Final Decision directly: "The deliberative process privilege is a doctrine that permits government agencies to withhold documents that reflect advisory opinions, recommendations and deliberations submitted as part of a process by which governmental decisions and policies are formulated. *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 150, 95 S. Ct. 1504, 1516, 44 L. Ed. 2d 29, 47 (1975). This long-recognized privilege is rooted in the concept that the sovereign has an interest in protecting the integrity of its deliberations. The earliest federal case adopting the privilege is *Kaiser Alum. & Chem. Corp. v. United States*, 157 F. Supp. 939 (1958). Federal district courts and circuit courts of appeal subsequently adopted the privilege and its rationale. *United States v. Farley,* 11 F.3d 1385, 1389 (7th Cir.1993)."

This privilege is particularly relevant in this case, being as the aforementioned inter-agency and intra-agency advisory, consultative, and/or deliberative material in these communications pertained to what was at the time pending civil litigation.

The body of certain other emails appearing in the PDF have been only partially redacted because, while determined not to constitute inter-agency or intra-agency advisory, consultative, or deliberative materials, they featured certain personal identifying information of adults and/or juveniles, including protected medical information, the release of which would violate their individual rights to privacy.

The body of certain other emails appearing in the PDF have not been redacted, and appear in their entirety.

Should you disagree with any element of 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
MONMOUTH COUNTY PROSECUTOR

/s/ *Mark Spivey*

By: Mark Spivey
Public Information Officer
OPRA Custodian of Records