



OFFICE OF THE COUNTY PROSECUTOR
JENNIFER WEBB-MCRAE
CUMBERLAND COUNTY PROSECUTOR

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September 22, 2023

Via email to: opra+request-52314-b7xxxxxx@xxxxxxxxx.xxramachine.com

Re: Records request

Dear Ms. Erin:

Please accept this letter in response to your records request dated September 4, 2023 and submitted via email. An extension request was sent to you via email in this matter on September 13, 2023, requesting a reasonable seven business day extension on the time frame for responding to this request. Your request is for the following records: “(1) Emails to and from assistant prosecutor Lesley Snock including: To, From, Subject, Date, and all attachments regarding defendant Jason Samaritano from December 5, 2022 to February 5, 2023; (2) A complete list of all Cumberland County prosecutors that have been directly involved in the defendant Jason Samaritano's cases; (3) A complete list of current employees in the Cumberland County Prosecutor's office including their position and date of hire.”

With regard to the portion of requests (1) that calls for all emails sent to or received by your named individual occurring between December 5, 2022 to February 5, 2023 “regarding” Jason Samaritano - this request is most analogous to the matter of Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-08 (April 2010), where a requestor requested all emails from a specified sender/recipient ranging from a specified time period. Seeking to curb

further ambiguity with regard to what constitutes a valid request for emails under the Open Public Records Act, then, the Government Records Counsel in Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-08 (April 2010), clearly stated: "In accord with MAG, supra, and its progeny, in order to specifically identify an e-mail, OPRA requests must contain (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail was transmitted or the emails were transmitted, and (3) a valid e-mail request must identify the sender and/or the recipient thereof". Accordingly then, a search of this office's email records was conducted for all emails sent to or received by your named individual which occurred during your specified date range, utilizing the subject matter keyword "Jason Samaritano". Please find all responsive records to that search attached as Responsive Record A, Responsive Record B and Responsive Record C.

Please note that redactions have been made from these records as required under the provisions of the Open Public Records Act. This includes records exempt from release under OPRA as advisory and deliberative materials, which are exempt from the provisions of the Open Public Records Act. Advisory and deliberative materials are exempt from disclosure pursuant to the statutory exemption from the Open Public Records Act for records that constitute inter-agency or intra-agency advisory, consultative, or deliberative material. N.J.S.A. 47:1A-1.1. See also In Re the Liquidation of Integrity Insurance Company, 165 N.J. 75 (2000) and Education Law Center v. NJ Department of Education, 198 N.J. 274 (2009). Notably, in Educ. Law Ctr. v. N.J. Dep't of Educ., 198 N.J. 274 (2009), the Court held that "a record, which contains or involves factual components, is entitled to deliberative-process protection when it was used in the decision-making process and its disclosure would reveal deliberations that occurred during that process". Id. at 280. Records have also been redacted which constitute criminal investigatory records which are exempt

from the provisions of the Open Public Records Act. Furthermore, a criminal investigatory record remains exempt from disclosure even after the criminal investigation has been closed. Donna Janeczko v. New Jersey Department of Law and Public Safety, Division of Criminal Justice, Custodian of Record, GRC Complaint Nos. 2002-79 and 2002-80; Andrew Johnson/Press of Atlantic City v. New Jersey Division of State Police, Custodian of Record, GRC Complaint No. 2004-46.

With regard to request (2), this office has no responsive record. Please note that to the extent that this request is a request for information as to which prosecutors have been “involved” in your referenced matter and not a request for a specifically identifiable record that can simply be turned over in response to this request, this request is denied as posing a request for information and research instead of for a specifically identified document. Where you appear to be requesting information in the form of what prosecutors have been “involved” in your specified matter, you have not named a specifically identifiable record and have instead requested that this records custodian obtain information and provide it to you. If a request does not name specifically identifiable records or is overly broad, a custodian may deny access pursuant to the following court decisions: MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Records custodians are required to search their files for responsive records, but not to conduct any research on behalf of the requestor. See Donato v. Tp of Union, GRC Complaint No. 2005-182, Analysis (February 28, 2007). Nor are custodians required to create new documents in response to requests.

Accordingly, to the extent that request (2) is a request calling for information or the creation of a new document outlining the procedures specified in this request, this request is denied on the basis of improperly calling for research not required of an OPRA custodian in order to identify information to which you are seeking and provide that information instead of calling for a specifically identifiable record under the provisions of the Open Public Records Act. Once again, however, to the extent that this request is calling for any record in the possession of this office which reflects a list of prosecutors comporting to the parameters of your request, this office has no responsive record.

With regard to request (3), this office has no responsive record comporting to the parameters you have described, which is a single document listing every employee of the Cumberland County Prosecutors Office, their position, and their date of hire. However, in the interest of transparency, I have attached as Responsive Record D the Cumberland County Prosecutor's Office Telephone Extension List, which is a record that lists every employee of the Cumberland County Prosecutor's Office as well as their position.

The Cumberland County Prosecutor's Office reserves the right to raise any other ground for denial not raised in this response. The failure of the Cumberland County Prosecutor's Office to assert an exception or privilege does not act as 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 have a right to challenge the decision by the Cumberland County Prosecutor's Office to deny access. At your option, you may institute a proceeding in the Superior Court of New Jersey. All questions regarding complaints filed in Superior Court should be directed to the Court

Sincerely,



Stephen C. Sayer [114352015]
Assistant Prosecutor

Alternate Records Custodian