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September 23, 2024

Mr. AK

VIA OPRA Machine: opra+request-66597-257ebd60@requests.opramachine.com

Re: Open Public Records Act (OPRA) request – Det. Kevan Kubiell

Dear Mr. AK:

This office is in receipt of your request made under the New Jersey Open Public Records Act (OPRA). With regard to your request for the current employment status of Det. Kevan Kubiell, please be advised that this request fails to identify a document in existence; therefore, this request is denied. With regard to your request for information as to Det. Kevan Kubiell's employment status and, if no longer employed, the reason therefor, please be advised that this request likewise fails to identify a document in existence; therefore, this request is also denied. With regard to your request for "All paperwork related to any Internal Affairs investigation or Criminal Investigation into any issues with Det. Kevan Kubiell," we can neither confirm nor deny the existence of records responsive to your request.

Law enforcement agencies routinely receive allegations that are determined to be unprovable, unfounded or untrue. Confirming the existence of investigations into such allegations could unfairly subject an individual to irreparable harm and subject this office and its employees to civil liability and professional discipline. It is for this reason, among others, that grand jury proceedings are conducted in secret.

Our courts have previously held that a prosecutor's office is ethically bound to refuse to confirm or deny the existence of records that may reveal whether there is, or has been, an investigation surrounding events for which a person has not been subject to arrest:

In sum, before OPRA was enacted, judicial decisions recognized the need to maintain “a high degree of confidentiality” for records regarding a person who has not been arrested or charged. The confidentiality accorded such information promotes both the integrity and effectiveness of law enforcement efforts for the benefit of the public at large. In addition, the grant of confidentiality protects the privacy interest of the individual who, lacking an opportunity to challenge allegations in court, would face irremediable public condemnation. The need and scope of confidentiality recognized in our courts' decisions “may duly be claimed to restrict public access to a public record or government record.” *N.J.S.A. 47:1A–9(b)*. We therefore hold that, pursuant to *N.J.S.A. 47:1A–9(b)*, an exemption exists for information received or maintained by law enforcement agencies regarding a person who has not been arrested or charged with an offense.

N. Jersey Media Grp. Inc. v. Bergen Cty. Prosecutor's Office, 447 N.J. Super. 182, 204 (App. Div. 2016)

Thus, as the above authority indicates, we cannot comment on whether any records exist pursuant to your third request. Should you disagree with our decision, please respond to 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.

Yours very truly,

/s/Dina R. Khajezadeh

Dina R. Khajezadeh

Assistant Prosecutor

DRK/dk