



MORRIS COUNTY PROSECUTOR'S OFFICE

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FREDRIC M. KNAPP

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January 7, 2020

VIA Email to OPRAmachine.com:

Joseph Iacovone

opra+request-8897-edec7ef6@requests.opramachine.com

RE: MCPO OPRA File Number 19-0232

Dear Mr. Iacovone:

The Morris County Prosecutor's Office received your Open Public Records Act (OPRA) and common law right of access request dated December 28, 2019, on December 30, 2019, and it was received by the records custodian on the same date. As such, the seven (7) business day deadline to respond to your request is January 9, 2020. You requested the following:

Please provide the below requested information (1-4) for each of the following separate time periods:

1/1/2017-12/31/2017; 1/1/2018-12/31/2018; 1/1/2019-6/1/2019

1. (A) Please provide the total number of counts charging 2C: 39-5b Unlawful Possession of a Handgun Without a Permit that were indicted during the above noted time periods. (It is recognized that an indictment can have multiple counts charging the same statute, therefore, the request is for the number of indicted COUNTS that charged 2C:39-5b, not the number of indictments that charged the offense.)

1. (B) Please provide the total number of counts that a defendant was sentenced in the Criminal Division for the crime of 2C:39-5b Unlawful Possession of a Handgun Without a Permit during the above noted time periods. (It is recognized that a sentence can include multiple counts of the same statute; therefore, the request is for the total number of COUNTS charging 2C:39-5b that were sentenced by a court, not how many sentences included the charge.)

2. (A) Please provide the total number of counts charging 2C: 39-4a (1) Possession of a Handgun for Unlawful Purposes - Person or Property that were indicted during the above noted time periods. (It is recognized that an indictment can have multiple counts charging the same statute, therefore, the request is for the number of indicted COUNTS that charged 2C:39-4a (1), not the number of indictments that charged the offense.)

2. (B) Please provide the total number of times that a defendant was sentenced in the Criminal Division for the crime of 2C:39-4a (1) Possession of a Handgun for Unlawful Purposes - Person or Property during the above noted time periods. (It is recognized that a sentence can include multiple counts of the same statute; therefore, the request is for the total number of COUNTS charging 2C:39-4a (1) that were sentenced by a court, not how many sentences included the charge.)

3. (A) Please provide the total number of counts charging 2C: 39-4a (2) Possession of a Handgun for Unlawful Purposes - Community Gun that were indicted during the above noted time periods. (It is recognized that an indictment can have multiple counts charging the same statute, therefore, the request is for the number of indicted COUNTS that charged 2C:39-4a (2), not the number of indictments that charged the offense.)

3. (B) Please provide the total number of times that a defendant was sentenced in the Criminal Division for the crime of 2C:39-4a (2) Possession of a Handgun for Unlawful Purposes - Community Gun during the above noted time periods. (It is recognized that a sentence can include multiple counts of the same statute; therefore, the request is for the total number of COUNTS charging 2C:39-4a (1) that were sentenced by a court, not how many sentences included the charge.)

4. (A) Please provide the total number of counts charging 2C: 33-29 Gang Criminality that were indicted during the above noted time periods. (It is recognized that an indictment can have multiple counts charging the same statute, therefore, the request is for the number of indicted COUNTS that charged 2C:33-29, not the number of indictments that charged the offense.)

4. (B) Please provide the total number of times that a defendant was sentenced in the Criminal Division for the crime of 2C:33-29 Gang Criminality during the above noted time periods. (It is recognized that a sentence can include multiple counts of the same statute; therefore, the request is for the total number of COUNTS charging 2C:33-29 that were sentenced by a court, not how many sentences included the charge.)

Based upon the information provided in your inquiry, and after conducting a diligent search, we are unable to locate any record[s] responsive to your request. While such information may be contained in numerous case files, such request is not “a proper one for specific documents within OPRA’s reach, but rather a broad-based demand for research and analysis, decidedly outside the statutory ambit.” MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 550 (App. Div. 2005).

The Judicial Branch in the State of New Jersey maintains a database known as Promis Gavel that may be able to produce records responsive to your request. While our Office has access to this system, the utilization of said access for private statistical mining is inappropriate and invalid under OPRA. Ibid.; see also Goeckel v. Chatham Borough Police Dep't (Morris), GRC Complaint No. 2013-356 (July 2014) (citing Blau v. Union Cnty., GRC Complaint No. 2003-75 (January 2005)) (a "custodian [is] under no obligation to provide a record that had not been created at the time of an OPRA request.").

Rather than being subject to the provisions of OPRA, access to Judiciary records are governed by New Jersey Court Rule 1:38. Please refer to the following web page for information concerning requests for Judiciary records:

- <https://njcourts.gov/courts/superior/par.html>

You have also requested the records under the common law. Access under the common law requires that "the person seeking access must 'establish an interest in the subject matter of the material'." Mason v. City of Hoboken, 196 N.J. 51, 67 (2008) (quoting Keddie v. Rutgers, 148 N.J. 36, 50 (1997)). As your request fails to declare a particularized interest in the non-supplied requested records, upon which a balancing of interests may be assessed, access to these records is also denied under common law. See O'Boyle v. Borough of Longport, 218 N.J. 168, 200 (2014).

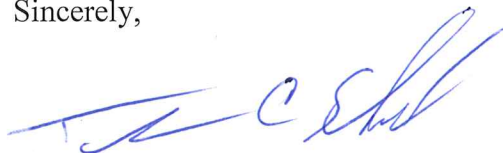
The Office of the Morris County Prosecutor reserves the right to raise any other grounds for denial not raised in this response. Failure of the Office of the Morris County Prosecutor to assert an exception or privilege does not act as a waiver of any grounds for denial. Furthermore, a reviewing Court or the Government Record's Council ("GRC") may deem a denial of access to be authorized on grounds other than those advanced by a custodian. Paff v. Twp. of Plainsboro, A-2122-05T2, 2007 WL 957289, at *2 (N.J. Super. Ct. App. Div. Apr. 2, 2007) affirming, Paff v. Township of Plainsboro, GRC Complaint No. 2005-29 (March 2006).

You have a right to challenge the decision by the Office of the Morris County Prosecutor to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the GRC by completing Denial of Access Complaint Form. You may contact the GRC by toll-free by telephone at 866-850-0511, by mail at PO Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or on the GRC's website at www.state.nj.us/grc. The Council can also answer other questions about the law.

Note that any challenge to a denial of a request for records under the common law cannot be made to the GRC, as the GRC only has jurisdiction to adjudicate challenges to denials of OPRA requests. A challenge to the denial of access under the common law can be made by filing an action in Superior Court. All questions regarding complaints filed in Superior Court should be directed to the New Jersey Superior Court Clerk.

This OPRA request is now deemed answered and closed.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. C. Schmid', is written over the printed name.

Thomas C. Schmid
Assistant Prosecutor || Custodian of Records

Knab, Meghan G.

From: Joseph Iacovone <opra+request-8897-edec7ef6@requests.opramachine.com>
Sent: Saturday, December 28, 2019 1:41 PM
To: Knab, Meghan G.; Schmid, Thomas; Zelante, Thomas A.
Subject: OPRA request - Gun Crime Indictments/Sentences

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Morris County Prosecutor's Office,

This is a request for public records made under OPRA and the common law right of access. I am not required to fill out an official form. Please acknowledge receipt of this message.

Records requested: Please provide the below requested information (1-4) for each of the following separate time periods:

1/1/2017-12/31/2017

1/1/2018-12/31/2018

1/1/2019-6/1/2019



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1. (B) Please provide the total number of counts that a defendant was sentenced in the Criminal Division for the crime of 2C:39-5b Unlawful Possession of a Handgun Without a Permit during the above noted time periods. (It is recognized that a sentence can include multiple counts of the same statute; therefore, the request is for the total number of COUNTS charging 2C:39-5b that were sentenced by a court, not how many sentences included the charge.)

2. (A) Please provide the total number of counts charging 2C: 39-4a (1) Possession of a Handgun for Unlawful Purposes - Person or Property that were indicted during the above noted time periods. (It is recognized that an indictment can have multiple counts charging the same statute, therefore, the request is for the number of indicted COUNTS that charged 2C:39-4a (1), not the number of indictments that charged the offense.)

2. (B) Please provide the total number of times that a defendant was sentenced in the Criminal Division for the crime of 2C:39-4a (1) Possession of a Handgun for Unlawful Purposes - Person or Property during the above noted time periods. (It is recognized that a sentence can include multiple counts of the same statute; therefore, the request is for the total number of COUNTS charging 2C:39-4a (1) that were sentenced by a court, not how many sentences included the charge.)

3. (A) Please provide the total number of counts charging 2C: 39-4a (2) Possession of a Handgun for Unlawful Purposes - Community Gun that were indicted during the above noted time periods. (It is recognized that an indictment can have multiple counts charging the same statute, therefore, the request is for the number of indicted COUNTS that charged 2C:39-4a (2), not the number of indictments that charged the offense.)

3. (B) Please provide the total number of times that a defendant was sentenced in the Criminal Division for the crime of 2C:39-4a (2) Possession of a Handgun for Unlawful Purposes - Community Gun during the above noted time periods. (It is recognized that a sentence can include multiple counts of the same statute; therefore, the request is for the total number of COUNTS charging 2C:39-4a (1) that were sentenced by a court, not how many sentences included the charge.)

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4. (B) Please provide the total number of times that a defendant was sentenced in the Criminal Division for the crime of 2C:33-29 Gang Criminality during the above noted time periods. (It is recognized that a sentence can include multiple counts of the same statute; therefore, the request is for the total number of COUNTS charging 2C:33-29 that were sentenced by a court, not how many sentences included the charge.)

Yours faithfully,

Joseph Iacovone

Please use deliver records electronically via email to the below UNIQUE address for all replies to this request:
opra+request-8897-edec7ef6@requests.opramachine.com

Is ProsecutorOPRA@co.morris.nj.us the wrong address for OPRA requests to Morris County Prosecutor's Office? If so, please contact us using this form:

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Please note that in some cases publication of requests and responses will be delayed.

If you find this service useful as an OPRA custodian, please ask your web manager to link to us from your organisation's website.