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January 7, 2020

Via Email – Joseph Iacovonef6295fd@requests.opramachine.com
Joseph Iacovone

Re: Request for Public Records of December 18, 2019

Dear Mr. Iacovone:

This is in response to your request for public records under OPRA and the common law dated 12-18-19, which this office received on 12-19-19, and which you requested the following:

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



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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.)

By correspondence dated December 23, 2019, this Office requested an extension of time until January 7, 2020 to respond to your request. Having received no objection, the extension was automatically granted and this response now follows.

First, the Open Public Records Act (OPRA) provides for access to specifically identifiable government records, and generally not to information. *MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534, 546-47 (App. Div. 2005); *Reda v. Tp. of West Milford*, GRC Complaint No. 2002-58 (January 17, 2003). Your request does not state whether you are requesting reports relative to a specific incident or a specific agency or municipality. To the extent your request broadly seeks "total numbers" and/or statistics without definition or identifying particular fields or government records it is vague and overboard and/or requires improper research beyond the responsibilities of a custodian under OPRA. See also *New Jersey Builders Association v. New Jersey Council on Affordable Housing*, 390 N.J. Super. 166, 180 (App. Div. 2007). OPRA does not extend to requests for information, nor is it the custodian's obligation to research and analyze your submissions to discern the nature of your request. See *Bent v. Stafford Twp. Police Dep't*, 381 N.J. Super. 30, 37-39 (App. Div. 2005); *Lagerkvist v. Office of the Governor*, 443 N.J. Super. 230, 236-237 (App. Div. 2015); *Spectraserv v. Middlesex Util.*, 416 N.J. Super. 565, 576 (App. Div. 2010).

The type of record you have requested, which is a list of cases charging certain statutes (2C:39-5b, 2C-39-4a(1), 2C-39-4a(2), 2C:33-29) for the years 2017 to 2019 is called a report. This office does not possess a specific report bearing all the information you have requested. This office does not normally produce that type of report you have requested and has no business need for it. The judiciary maintains the Promis Gavel network that might have access to said data. While this office has access to, Promis Gavel, it does not control, the Promis Gavel Network (PG). As stated, PG is an automated criminal case tracking system controlled by the Administrative Office of the Courts (AOC). The public has access to it in every state courthouse. In Bergen County, the public access terminal is located in the county Justice Center, 10 Main Street, Hackensack. As a county prosecutor's office, this office is a permitted user of PG and has input responsibilities to it, but neither controls, nor programs it. Whether you may also obtain the record you seek through the public access terminal or through the AOC is a separate question that is not before me. I have enclosed pages from the New Jersey Courts website, www.judiciary.state.nj.us, which describe PG and the public's access to it. They may be of help to you.

Notwithstanding and/or without waving the objections noted above and in an effort to accommodate you while our production of a report through our electronic record keeping system would constitute creating a record for you rather than providing you with an existing record, to the extent some of the information you have requested exists within said system, I am attaching under OPRA and the common law, a document that reflects indictments for the statutes you cited for the periods requested. This office does not possess a report bearing the disposition or sentence, if any, nor were there charges of 2C:33-29 for years 2017 and 2019. See *Williams v. Passaic County Prosecutor's Office*, GRC Complaint No. 2014-297 (finding that where "no records responsive to the request exist, no unlawful denial of access occurred").

Lastly, you should understand that this office does not keep a central registry of arrests related to violations of the statutes you cite. Each record associated with such incidents is stored in the case file to which it relates. As a result, there is no way to independently confirm this generated report, for completeness, for the periods you identify without going through each file within this office for the same period. To do so would constitute impermissible research and would be otherwise disruptive to agency operations which would necessitate a denial on such grounds. MAG, *supra*. see also *N.J.S.A.* 47:1A-5.g.

The Bergen County Prosecutor's Office also reserves the right to raise any other ground for denial not raised in this response. The failure of the Bergen County Prosecutor's Office to assert an exception or privilege does not act as a waiver of any ground for denial.

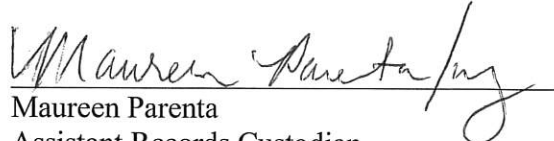
You have a right to appeal the decision that the document or documents are not public records or are otherwise exempt from disclosure. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council ("GRC") by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at PO Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The Council

can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your county.

Very truly yours,

MARK MUSELLA
Bergen County Prosecutor

By:


Maureen Parenta
Assistant Records Custodian

MP/mf