



**OFFICE OF THE COUNTY PROSECUTOR
COUNTY OF MONMOUTH**

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MONMOUTH COUNTY PROSECUTOR

January 17, 2020

To ASK NJ Media Co.:

This Office is in receipt of your January 6, 2020 request for the following information under OPRA and the common law right of access:

- 1.) Total number of counts charging 2C:39-5b that have been indicted
- 2.) Total number of counts upon which sentence was imposed for a 2C:39-5b conviction
- 3.) Same as (1) except as to 2C:39-4a(1)
- 4.) Same as (2) except as to 2C:39-4a(1)
- 5.) Same as (1) except as to 2C:39-4a(2)
- 6.) Same as (2) except as to 2C:39-4a(2)
- 7.) Same as (1) except as to 2C:33-29
- 8.) Same as (2) except as to 2C:33-29

The information is requested for calendar years 2017, 2018, and Jan. 1 through June 1, 2019.

On January 15, 2020, we sought an extension of time, to January 22, 2020, to reply. Our response to your requests is as follows:

This Office does not keep a record of the numbers that you seek. There is no paper record responsive to your requests.

This Office does maintain an electronic database that contains case charging and disposition information (Infoshare). I have consulted with our IT technician and been advised that our system will not output the numbers that would be responsive to your request.

I am familiar with and have considered Paff v. Galloway Township, 229 N.J. 340 (2017). Mr. Paff requested specific information from two weeks' worth of emails, in particular, "sender," "recipient," "date," and "subject." The government agency was able to extract from its electronically stored emails the specific information that Paff requested. The Supreme Court ruled that Paff's request for electronically stored information was a request for a "government record" as defined by OPRA and that, because the agency's system could generate the requested information, it could produce the requested record.

In contrast to Paff, a search of our system cannot extract the numbers specified by your requests. Infoshare can generate reports with a lot of information that you are not requesting, but from which the requested numbers, upon analysis and tabulation, might manually be gleaned. Your request, however, is not for the bulk information that Infoshare can output. And, even if it were, providing the bulk information would be akin to allowing a prohibited “open-ended search” of this agency’s files. I do not read Paff to change the law that OPRA “does not countenance wholesale requests for general information to be analyzed, collated and compiled by the responding government agency.” See 229 N.J. at 355-56; Burke v. Brandes, 429 N.J. Super. 169, 174 (App. Div. 2012); Bent v. Township of Stafford Police Dep’t, 381 N.J. Super. 30, 37 (App. Div. 2005). An electronic search of information stored in Infoshare will not yield a “government record” -- as interpreted by Paff -- that is responsive to your requests.

Like all prosecutor’s offices, this Office has access to Promis/Gavel, a database of “computerized records in the custody and control of the New Jersey Judiciary.” <https://ecourts.judiciary.state.nj.us/webe4/ExternalPGPA/> The judiciary makes “[s]elected information from Promis/Gavel [] available to the public via public access terminals located at courthouses in each county and via the Internet public access portal.” <https://www.njcourts.gov/courts/criminal/promisgavel.html> As indicated by these descriptors, the judiciary has determined the manner and extent that the information in its database shall be released to the public. While the Monmouth County Prosecutor’s Office has password-protected access to Promis/Gavel, the electronic information stored therein is not ours to share with you.

To be a “government record” within the meaning of OPRA, the record must have “been made, maintained or kept on file [or] received in the course of” the agency’s official business. N.J.S.A. 47:1A-1.1. This Office does not make, maintain, keep on file, or receive the information stored in Promis/Gavel that might be responsive to your OPRA request. Decisions of the Government Record Council, most notably Franklin v. Passaic Cty Pros. Office, GRC Compl. 2016-308 (Aug. 21, 2018), concur that prosecutors’ offices do not “store or maintain the Promis/Gavel system” and, under Paff, are not required to utilize Promis/Gavel to produce records in response to OPRA requests. Consistent with the above, this Office is not amenable to producing Promis/Gavel reports (assuming they could be run) in response to your request. Cf. Bent, 381 N.J. Super. at 38-39 (custodian has no obligation to search for records beyond his or her agency’s files).

The foregoing applies to your record requests under both OPRA and the common law right of access.

We are mindful that your request is for specific statistical information that does not implicate privacy interests. Although there is no responsive government record -- paper or electronic -- that exists to be converted to the PDF format that you request, we want to accommodate you. This Office therefore is willing to disclose the number statistics that we are able to glean from the bulk information and reports discussed *supra*. In Monmouth County:

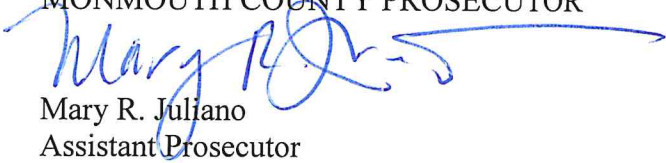
N.J.S.A. 2C:39-5b was charged by indictment or accusation	187 times in 2017 156 times in 2018 117 times in 2019 ¹
N.J.S.A. 2C:39-4a(1) was charged by indictment or accusation	75 times in 2017 57 times in 2018 39 times in 2019
N.J.S.A. 2C:39-4a(2) was charged by indictment or accusation	2 times in 2017 5 times in 2018 0 times in 2019
N.J.S.A. 2C:33-29 was charged by indictment or accusation	1 time in 2017 1 time in 2018 0 times in 2019

Our reports and data do not allow for a readily-obtainable, accurate tabulation of the sentence information that you request in Questions 1(B), 2(B), 3(B), or 4(B) of your email.

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. Failure of this Office to assert an exception or privilege at this time should not be considered a waiver of any grounds for denial.

Very truly yours,

CHRISTOPHER J. GRAMICCIONI
MONMOUTH COUNTY PROSECUTOR

By:  Mary R. Juliano
Assistant Prosecutor

¹ The references herein to 2019 are to the January 1 through June 1 period that was the subject of the request.