



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

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April 15, 2024

Via email to: opra+request-61465-d20776b9@requests.opramachine.com>

Re: Records request

Dear Ms. Erin:

Please accept this letter in response to your records request which was first received by this Records Custodian on May 6, 2024. Your request is for the following records: "I would like to request the following Internal Affairs Report case number is IA-23-0013".

With regard to this request, this request is denied as a request pursuant to the Open Public Records Act on the basis of calling for an internal affairs record, which would render such records exempt from the provisions of OPRA. OPRA's broad right to access is not absolute, but is instead limited by "established public-policy exceptions," stated in the statute, which declare "[a] government record shall not include... information which is deemed to be confidential." Gilleran v. Bloomfield, 227 N.J. 159, 170 (2016) (quoting N.J.S.A. 47:1A-1.1). Similarly in North Jersey Media Group v. Bergen County Prosecutor's Office, 447 N.J. Super. 182, 201-202 (App. Div. 2016) the Court recognized that the provisions of the Open Public Records Act specifically do not abrogate or erode existing exemptions to public access, including "regulation[s] promulgated under the authority of any statute or Executive Order of the Governor" or "any executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law". N.J.S.A. 47:1A-9.

Internal affairs investigations by law enforcement agencies fall under the supervision of the Attorney General, who is New Jersey's chief law enforcement officer. N.J.S.A. 52:17B-98. The Guidelines of the Attorney General were adopted pursuant to N.J.S.A. 40A:14-181 mandating that every law enforcement agency in New Jersey adopt and implement guidelines consistent with the guidelines governing the "Internal Affairs Policy and Procedures". These guidelines "are binding upon local law enforcement agencies". Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark, 459 N.J. Super. 458, 500 (App. Div.), certif. granted, 240 N.J. 7 (2019). The Internal Affairs Guidelines specifically mandate that the resulting materials from internal investigations are confidential. IAPP § 9.6.1.

Accordingly, the Attorney General Guidelines within the Internal Affairs Policy and Procedures act with the force of law in rendering materials generated from internal investigations exempt from public access pursuant to the Open Public Records Act, as the Government Records Council has repeatedly held. Carmelo Lio v. Borough of Fairview (Bergen), GRC Complaint No. 2014-431 (November 2015), Wares v. Township of West Milford (Passaic), GRC Complaint No. 2014-274 (May 2015), Blaustein v. Lakewood Police Dep't (Ocean), GRC Complaint No. 2011-102 (June 2012), and Rivera v. Borough of Keansburg Police Dep't (Monmouth), GRC Complaint No. 2007-222 (June 2010). Accordingly, this record is also denied as requesting internal affairs records exempt from release under the provisions of the Open Public Records Act.

With regard to the court's recent holding in Rivera v. Union County Prosecutor's Office (March 2022), Rivera also affirms that internal affairs records are barred from release under the Open Public Records Act. Rivera v. Union Cnty. Prosecutor's Off., 250 N.J. 124, 135, 270 A.3d 362, 368 (2022). The Court in Rivera provided a test for trial courts to apply to records demanded pursuant to the common law for determining whether records are appropriate for release under the common law, while affirming that such records are not appropriate for release pursuant to an Open Public Records Act request.

While requestors also have a “common law right of access” to government records, the right to access under the common law is a qualified one and therefore a requestor “must establish an interest in the subject matter of the material,” and the requestor’s “right to access material must be weighed against the State’s interest” in maintaining the confidentiality of the material. Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 31 A.3d 623, 642 (N.J. Super. Ct. App. Div. 2011). Under the common law, when a request invokes the common law right of access the court conducts a balancing test, and with regard to requests for internal affairs records, the courts additionally apply the additional factors for consideration is outlined in Rivera v. Union Cnty. Prosecutor's Off., 250 N.J. 124, 135, 270 A.3d 362 (2022). I cannot perform that analysis

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