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Via email opra+request-79441-4d53e647@requests.opramachine.com

Re. Request for Public Records dated 8/12/25 - Internal Affairs

Dear Concerned Resident:

This is in response to your request for public records dated 8-12-25 which this office received on 10-15-25 and in which you sought the following:

I would like one year of any letters, recorded conversations, title 59 tort claim act notices, lawsuits, written complaints, internal affairs complaints, internal affairs investigations, major discipline report, documents related to major discipline actions written about or submitted to the bergen county prosecutor's office from the date of 7/01/2024 through 7/31/2025.

The Bergen County Prosecutor's Office objects to this request as submitted because the request is overbroad and invalid. OPRA does not authorize a party to make a blanket request for all "letters, recorded conversations, Title 59 tort claim act notices, lawsuits, written complaints, internal affairs complaints, internal affairs investigations, major discipline report, documents related to major discipline actions written about or submitted" that is limited only by a one-year qualifier. *Bent v. Township of Stafford Police Dept., Custodian of Records*, 381 N.J. Super. 30, 37, 39 (App. Div. 2005). The requestor's obligation is to specifically describe the document sought; the request may not be a broad, generic description of documents because the custodian is not required to speculate about what the requestor seeks, nor survey agency employees regarding the request. *Bart v. Passaic Cnty. Pub. Hous. Agency*, 406 N.J. Super. 445, 451-52 (App. Div. 2009)." Further, the Open Public Records Act is "not intended as a research tool litigants may use to force government officials to identify and siphon useful information." *MAG*



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Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). For example, a request for e-mails, a form of correspondence, “must contain (1) the content and/or subject matter of the e-mail, (2) the specific date or range of dates during which the e-mail was transmitted or the e-mails were transmitted and (3) a valid e-mail request must identify the sender and/or the recipient thereof.” *Joseph A. Elcavage v. West Milford Township Custodian of Record*, GRC Complaint No. 2009-08, April 8, 2009. Your request lacks such specificity. “OPRA does not convert a custodian into a researcher.” *Lagerkvist, supra*, at 236. Your request is therefore clearly infirm in this regard.

Stated differently, the request as submitted fails to name specifically identifiable government records, or reference crimes, matters, subjects, or parties, and requires research beyond the scope of a custodian’s duties pursuant to *MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*, 375 N. J. Super. 534, 546 (App. Div. 2005), *Bent v. Stafford Police Department*, 381 N.J. Super. 30, 37 (App. Div. 2005), *New Jersey Builders Association v. New Jersey Council on Affordable Housing*, 390 N. J. Super. 166, 180 (App. Div. 2007), and *Schuler v. Borough of Bloomsbury*, GRC Complaint No. 2007-151 (February 2009). See also *Toscano v. NJ Department of Labor, Division of Vocational Rehabilitation Services*, GRC Complaint No. 2010-293 (March 2012), *Elcavage v. West Milford Township (Passaic)*, GRC Complaint No. 2009-08 (April 2010), and *Wolosky v. Township of Randolph (Morris)*, GRC Complaint No. 2010-244 (February 2012).”

Furthermore, this office does not keep a central registry of the information you requested. Case records including correspondence, recordings as well as internal affairs records, are stored in individual case files typically by the target, defendant and/or victim name and not by reference to types of records. As your request stands now, it requires research rather than seeking readily identifiable records. *MAG Entertainment, LLC v. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534 (App. Div. 2005). I should note that your request, as now written, would also necessitate a special service fee to be imposed if you maintain the request be processed as is and should we were to agree to do so given its sheer breath and lack of specificity. Preliminarily, your request would necessitate the manual review of nearly all Agency records and potentially implicate a plethora of non-criminal investigatory records including but not limited to complaints by employees and/or vendors, courthouse closing notices, and virtually all correspondence whether privileged or otherwise over a one-year period.

In *Carter v. New Jersey Dep’t of Community Affairs*, 2019 WL 6713293 (N.J. App. Div. Dec. 10, 2019), an OPRA request was submitted for “complete copies of any and all ‘Notice of Docketing’ records” issued by the Appellate Division, resulting from an appeal pursuant to *N.J.S.A.* 40A:9-22.9 of any final agency decision of the Local Finance Board, for a five year period between 2011 and 2016. The agency explained that neither it nor its databases organized or listed matters based on the description the requestor had provided, and the requestor had provided no case names, party names, or docket numbers. Consequently, the custodian would need to manually identify cases, locate records in storage, and manually review each potentially applicable case file for responsive records. The agency denied the request on the ground that fulfilling the request would require the custodian to exercise judgment and conduct research. *Id.* at *1.

The General Records Council denied the requestor's challenge to the denial and the Appellate Division affirmed. The Appellate Division distinguished between a search for records, which a custodian is required to do under OPRA, and research, which is beyond the ambit of OPRA. *Id.* at *3. Noting that the agency did not maintain a database or list of records responsive to the request for Notices of Docketing, the Appellate Division held that the custodian would have to "search through thousands of cases to identify documents relevant to the request" – it would have to both "exercise discretion" and "undertake research." Citing *MAG Entm't, LLC v. Division of Alcoholic Beverage Control*, 375 N.J. Super. 534 (App. Div. 2005), the court held that "[r]equests for general information – like here – that must be 'analyzed, collated and compiled' by the agency are outside the scope of OPRA." The court further indicated:

As [the requestor] emphasized during oral argument before us, he specified a subject and the relevant timeframe, but he did include a case name, party name, or docket number. The failure to include these identifiers would have forced the custodian to research and manually identify the documents. Like in *N.J. Builders [Ass'n v. New Jersey Council on Affordable Housing]*, 390 N.J. Super. 166, 172 (App. Div. 2007),] this request for "any and all" information placed the burden on the custodian to locate germane documents, which is improper. *Id.* at *4.

Your request for broad class of records for unspecified cases/matters connected only by reference to a one-year period is materially the same as *Carter*. Like the public agency in *Carter*, my Office does not organize, or list matters based on the descriptions you provided. As in *Carter*, your requests include a broad type of document but no case name, incident, matter, subject, party name, docket number -- placing the burden on this Office to research countless files to determine whether the germane documents might be contained therein. Like in *Carter*, this Office has no obligation to exercise judgment in trying to circumscribe the universe of relevant files, locate them, and then manually review each potentially applicable case for responsive records. Your request is invalid and denied. I note that, while *Carter* is an unpublished case, it applied settled New Jersey law, as evidenced by its citations to *MAG, N.J. Builders, Bent v. Township of Stafford Police Dep't*, 381 N.J. Super. 30 (App. Div. 2005), *Burke v. Brandes*, 429 N.J. Super. 169 (App. Div. 2012), and *Burnett v. County of Gloucester*, 415 N.J. Super. 506 (App. Div. 2010).

Let me suggest that under these circumstances, it might be less burdensome for you and this Agency if you revise your request to identify specific incidents and specific parties. If you were to request records related to specific incidents, I would be able to locate records existing, if any, and either provide them or deny access based on a specific statutory exemption. As our prior reply indicated, this Agency possess no investigative records responsive to your initial request.

Should you wish to clarify, I must point out that to the extent you seek internal affairs records same would be exempt from disclosure as an IA and as personnel records. The New Jersey Attorney General's Internal Affairs Policy & Procedures (IA Policy), Issued August 1991, Revised November 1992, November 2000, September 2011, July 2014, and November 2017 states: "The nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information." The authority of the IA Policy with respect to OPRA has been upheld. *O'Shea v. Township of West Milford*, 410 N.J. Super. 371 (App. Div. 2009).

Also, OPRA's general bar provided by *N.J.S.A. 47:1A-10*, exempts the wholesale access of personnel records. See also *Kovalcik v. Somerset County Prosecutor's Office*, 206 N.J. 581 (2011).

Additionally, correspondence and/or communications between/from the BCPO and the other law enforcement entities as to internal investigations constitute inter-agency "advisory, consultative, or deliberative material[s]", which are exempt from OPRA's definition of "government record." See *N.J.S.A. 47:1A-1.1*. This exception was implemented by the Legislature.

Lastly, records involving employee discipline or investigations into employee misconduct are classified as personnel records and are exempt from disclosure. *Rodriguez v. Kean University*, GRC Complaint No. 2013-296 (June 2014). By way of example, in *Paff v. Egg Harbor Tp.*, the Court held that a records custodian properly denied the disclosure of notices of preliminary and final disciplinary action created by the police department since "[d]iscipline imposed against an officer is a part of an officer's employment record and is generally included in their personnel file." *Paff v. Egg Harbor Tp.*, ATL-L-8976-11, 2013 WL 7877520 (Law Div. June 25, 2013).

As a courtesy to you, I point out to you to the extent responsive that our web site <https://www.bcpo.net/internal-affairs-complaints-referrals/> lists 2024 internal affairs summary reports. Further, the Attorney General of New Jersey maintains 2024 major discipline reporting on its web page at <https://www.njoag.gov/majordiscipline/>.

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,

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Bergen County Prosecutor

Maria Fagliarone/s/
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