



MORRIS COUNTY PROSECUTOR'S OFFICE

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Robert M. McNally

Chief of Detectives

February 20, 2025

VIA Email:

Brightstone Legal Group

opra+request-66451-dac7d095@requests.opramachine.com

RE: MCPO OPRA File Number 24-0140

Dear Brightstone Legal Group:

The Morris County Prosecutor's Office received your Open Public Records Act (OPRA) request dated September 11, 2024, on September 11, 2024, and it was received by the records custodian on the same date. You requested the following:

Records requested: The initial Internal Affairs complaint from Chief Frank Perna of the Denville Township Police Department, to the Professional Standards unit of the Morris County Prosecutor's Office, regarding Official Misconduct which took place on 9/22/23 by Captain Jeff Tucker of the Denville Township Police Department.

The Morris County Prosecutor's Office can neither confirm nor deny the existence of records related to your request.

Legal and ethical doctrines prevent law enforcement agencies from disclosing information that would confirm the existence, or nonexistence, of pre-charge investigations related to a specific individual. "[B]efore OPRA was enacted, judicial decisions recognized the need to maintain "a high degree of confidentiality" for records regarding a person who has not been arrested or charged." *N. Jersey Media Grp. Inc. v. Bergen Cty. Prosecutor's Office*, 447 N.J. Super. 182, 203-04 (App. Div. 2016). "In addition, the grant of confidentiality protects the privacy interest of the individual who, lacking an opportunity to challenge allegations in court, would face irremediable public condemnation." *Ibid.* "Therefore, pursuant to N.J.S.A. 47:1A-9(b), an exemption exists under OPRA that precludes a custodian of records from disclosing whether such records exist in response to an OPRA request." *Id.* at 189.

While neither confirming nor denying the existence of records related to your request, it should be noted that such records would be inaccessible on the ground that personnel records are exempt from disclosure pursuant to N.J.S.A. 47:1A-10. "Records of external grievances, or complaints pertaining to excessive force or falsifying police reports, and complaints from the general public regarding law enforcement officers are exempt from disclosure." Wares v Passaic Cty. Prosecutor's Office, GRC Complaint No. 2014-330. See also Merino v. Borough of Ho-Ho-Kus, GRC Complaint No. 2003-110 (Interim Order dated March 2004); Vaughn v. City of Trenton (Mercer), GRC Complaint No. 2009-177 (June 2010). Accordingly, internal affairs investigations of law enforcement officers, wherein the Morris County Prosecutor's Office is acting in its supervisory capacity as the chief law enforcement agency in Morris County, are not subject to disclosure. Kovalcik v. Somerset Cty. Prosecutor's Office, 206 N.J. 581, 594 (2011) (the OPRA exemption for personnel records "begins with a presumption of non-disclosure and proceeds with a few narrow exceptions.").

Furthermore, the New Jersey Attorney General's Internal Affairs Policy and Procedure Guideline deems confidential "[t]he nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials," thus, exempt from disclosure (IAPP, Internal Affairs Records, Section 9.6.1, August 2020 revision). OPRA does not abrogate the Guideline's confidentiality designation. N.J.S.A. 47:1A-9(a). An unpublished Appellate Division decision offers sound reasoning for granting Attorney General Guidelines the same force of law provided to the enumerated agencies listed in N.J.S.A. 47:1A-9(a). Paff v. Bergen Cty., 2017 WL 957735, at *5 (N.J. Super. Ct. App. Div. Mar. 13, 2017). The Government Records Counsel has equally held that the IAPP and other Attorney General Guidelines have the force of law. See Rivera v. Borough of Keansburg Police Dep't (Monmouth), GRC Complaint No. 2007-222 (June 2010) (citing O'Shea v. Twp. of West Milford, 410 N.J. Super. 371, 382 (App. Div. 2009)).

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).

Additionally, our agency's interest in not confirming the existence of personnel records is closely linked to the public policy supporting the statutory exemptions in N.J.S.A. 47:1A-10. It is clearly inherent that the Legislature gave significant consideration with regards to the confidentiality of personnel records by dedicating a subsection of OPRA to this specific category of records. To ignore this mandate would reduce to mere surplusage the Legislature's deliberate, unique treatment of personnel records. See DKM Residential Props v. Twp. of Montgomery, 182 N.J. 296, 307 (2005) ("When interpreting a statute or regulation, we endeavor to give meaning to all words and to avoid an interpretation that reduced specific language to mere surplusage."). For the foregoing reasons, to the extent that your request is based upon common law, same is also denied, as your request fails to demonstrate compelling circumstances or a strong showing of particularized need which would overcome the State's interest in nondisclosure.

This OPRA request is now considered answered and closed.

Sincerely,



Thomas C. Schmid
Assistant Prosecutor || Custodian of Records

Knab, Meghan G.

From: Brightstone Legal Group <opra+request@bri>
Sent: Wednesday, September 11, 2024 8:53 AM
To: Prosecutors OPRA Requests
Subject: OPRA request - Internal Affairs Complaint

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,

Please accept this electronic request for public records made under OPRA and the common law right of access. I am not required to fill out an official form or use a particular software platform to submit my request per NJSA 47:1A-6(f), which states that an email from a requestor including all of the information required on the adopted form shall suffice in place of a completed form as a valid government record request.

I HAVE NOT been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

I WILL NOT use the requested government records for a commercial purpose.

I AM NOT seeking records in connection with a legal proceeding.

Records requested: The initial Internal Affairs complaint from Chief Frank Perna of the Denville Township Police Department, to the Professional Standards unit of the Morris County Prosecutor's Office, regarding Official Misconduct which took place on 9/22/23 by Captain Jeff Tucker of the Denville Township Police Department.

My preferred delivery method for response(s) to this request is by E-mail as attachments. Please confirm you have received this request. If you are not the custodian of records, please forward my request to that person and provide their email address to me for future reference.

Yours faithfully,

Brightstone Legal Group.

RECEIVED

By Meghan Knab at 9:27 am, Sep 11, 2024

Please deliver records electronically via email to the below UNIQUE address for all replies to this request:

opra+request-66451-dac7d095@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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View this OPRA request & responses online:

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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.

"OPRAmachine's mission is to give people easy and affordable access to New Jersey public records.

For more information, contact us at: (732) 707-1628 or PO Box 3180, New Brunswick, NJ 08903."
