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COUNTY OF MONMOUTH

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MONMOUTH COUNTY PROSECUTOR

June 25, 2020

ASK NJ Media

RE: OPRA Requests Submitted June 19 through 24, 2020

In the last four business days, the Monmouth County Prosecutor's Office has been flooded with public record requests submitted by you. As OPRA custodian and in an effort to satisfy the requests promptly, I have spent three of the last four business days (approximately 17 hours) working solely on your requests: to locate and retrieve the requested records, redact the information exempt from disclosure, and scan and transmit the records to you with explanatory correspondence. Since Friday, June 19, 2020, I have provided you records in response to **thirty-four (34)** of your requests.

Notwithstanding, each time I provided you records, within hours you have served another batch of record requests on this Office. As I write this letter, this Office has **twenty-six (26)** *pending* record requests from you. Between requests satisfied and outstanding, therefore, that is a total of **sixty (60)** record requests from you in four (4) business days.

As to the requests themselves, there seems to be no rhyme or reason: they refer to closed cases and open cases, old and new, and more recently, weekly felony case lists that go back months. The case-related requests initially were for complaints and dispositions; then, evolved to include affidavits of probable cause and "mug shots"; thereafter, CAD reports "with narratives" were added; and, the most recent batch includes police incident reports too. In other words, as you are well aware, the requests themselves have become more burdensome as to the number of records requested and the number of redactions that will have to be done before the records can be released. On more than one occasion, you have requested documents on a particular case and received them, then followed up with additional requests for more, different documents from the same file. Multiple of your requests require access to paper files in storage.

Your requests almost never identify a particular case; rather, they provide a defendant's name and demand copies of "any" of the aforementioned records as to that defendant. As you surely understand, a defendant can and often does have more than one case in this Office. Your requests do not distinguish by case number, charge or incident. And, your requests sometimes group multiple defendants in the same request, each one of whom may have multiple files. Therefore, a single request could implicate records from many, many case files.

The pattern that has developed over the last four days will not continue. Working full-time to satisfy your record requests has not been enough to keep up with them, and we do not have a staff member dedicated solely to retrieving records for you. I have a workload separate and apart from OPRA, and I have requests for records separate and apart from yours that I am obliged to satisfy. Our resources and staffing have proven sufficient to accommodate a reasonable volume of record requests. They are not sufficient to accommodate the massive number of escalating requests that you have inflicted on this Office.

MAG Entm't, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), states:

OPRA simply operates to make identifiable government records “readily accessible for inspection, copying, or examination.” N.J.S.A. 47:1A-1. Even then, inspection is subject to reasonable controls, and courts have inherent power to prevent abuse and protect public officials involved. See DeLia v. Kiernan, 119 N.J. Super. 581, 585 (App. Div.), certif. denied, 62 N.J. 74 (1972). In fact, if a request would substantially disrupt agency operations, the custodian may deny it and attempt to reach a reasonable solution that accommodates the interests of the requestor and the agency. N.J.S.A. 47:1A-5(g).

Typically, a custodian has seven business days to respond to an OPRA request. N.J.S.A. 47:1A-5(i)(1). During a period of a state of emergency, however -- as the present is -- that deadline does not apply, and the custodian need make “a reasonable effort, as the circumstances permit” to respond to a request for access within seven business days or as soon as possible thereafter. N.J.S.A. 47:1A-5(i)(2).

Spending the last week solely to process your record requests has put me behind. I have a conference in federal court next week that I need to prepare for, a brief due to the Parole Board tomorrow, and two appellate briefs that are overdue and on extension. As indicated, I have pending OPRA requests from individuals other than you. My support staff continues to operate on a reduced in-office schedule due to the pandemic. Please be advised that, for the reasons stated herein, the **twenty-six (26)** record requests that you have pending will not be satisfied within the seven-day period. Rather, you can expect a response to them no later than Friday, July 17, 2020.

I understand that you are free to continue filing record requests in the interim. I hope that you understand from this letter that, up to this point, I have worked overtime to promptly satisfy your requests; in return, you have bombarded me with more requests that have escalated in content and volume. It feels harassing and abusive. It has been “substantially disruptive.” This letter is an “attempt to reach a reasonable solution” with you, in accordance with N.J.S.A. 47:1A-5(g). Please stop abusing the right conferred to you under OPRA and stop wasting public resources and abusing the public personnel who are working to satisfy your requests. Please exercise moderation and discrimination in making your requests. Consider withdrawing frivolous requests that are pending, for example, for CAD and arrest reports in State v. McAtasney, Case 17-0519, the facts and evidence of which were aired before a jury over a year

ago and nationally publicized. Consider putting case identifiers in your requests that clarify and narrow the request to indicate which file or case is in fact the subject of your request.

We will see where we are in the coming weeks. If the pattern of escalation continues, this Office will consider available remedies: additional extensions and/or denial under N.J.S.A. 47:1A-5(g) & (i); imposition of a service fee under N.J.S.A. 47:1A-5(c) (if accommodating request “involves an extraordinary expenditure of time and effort”); or, application to the court for “reasonable controls, to prevent abuse and protect the public officials involved,” MAG, 375 N.J. Super. at 546.

Respectfully,

CHRISTOPHER J. GRAMICCIONI
MONMOUTH COUNTY PROSECUTOR

/s/ Mary R. Juliano

By: Mary R. Juliano
Assistant Prosecutor