

LAW OFFICES

TRIARSI, BETANCOURT, WUKOVITS & DUGAN, LLC

FOUNDED 1969

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AS A CRIMINAL TRIAL ATTORNEY
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AS A CERTIFIED MUNICIPAL COURT ATTORNEY
○NY BAR
○○NY & NC BARS

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JACOB L. TRIARSI
OF COUNSEL
(1934-1987)

ALFONSO L. PISANO
OF COUNSEL
(1960-2005)

April 20, 2022

BY EMAIL

Mr. Sean Sullivan
Reporter
NJ Advance Media

Re: Requests under OPRA

Dear Mr. Sullivan:

This letter is in response to your requests under the Open Public Records Act dated April 7, 2022 and April 15, 2022 as follows:

OPEN PUBLIC RECORDS ACT REQUEST DATED APRIL 7, 2022

- Any communications (including email or written) between Clark Township or Clark officials and its Joint Insurance Fund (JIF) regarding the 2020 settlement with former Police Lt. Antonio Manata.

Without conceding that any such communications exist, such information is exempt under OPRA because "... [a] government record shall not include the following information which is deemed to be confidential for the purposes of P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented: ... information which is a communication between a public agency and its insurance carrier, administrative service organization or risk management office." N.J.S. 47:1A-1.1.

- Receipts for payments made to the JIF during 2020.

It is unclear what you mean by "Receipts." I have enclosed an accounting of payments made to the JIF during 2020 entitled "Detail Vendor Activity Report," dated April 11, 2022. Should the term "Receipts" have a different meaning, kindly advise and elaborate.

- Any claims made by the township to the JIF during 2020.

Without conceding that any such communications exist, such information is exempt under OPRA because "... [a] government record shall not include the following information which is deemed to be confidential for the purposes of P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented: ... information which is a communication between a public agency and its insurance carrier, administrative service organization or risk management office." N.J.S. 47:1A-1.1.

- A copy of Clark Township's current policy with the JIF.

Without conceding that any such communications exist, such information is exempt under OPRA because "... [a] government record shall not include the following information which is deemed to be confidential for the purposes of P.L.1963, c. 73 (C.47:1A-1 et seq.) as amended and supplemented: ... information which is a communication between a public agency and its insurance carrier, administrative service organization or risk management office." N.J.S. 47:1A-1.1.

- A copy of the video and/or audio recording of the February 3, 2020 special council meeting.

The Clerk has addressed or is addressing this request by separate email or letter.

OPEN PUBLIC RECORDS ACT REQUEST DATED APRIL 15, 2022

- I am seeking a copy of the December 20, 2019 letter from Ben Schulman of Summit Risk Services to Mayor Bonaccorso, Chief Matos and other township officials regarding the claim related to the settlement with Antonio Manata.

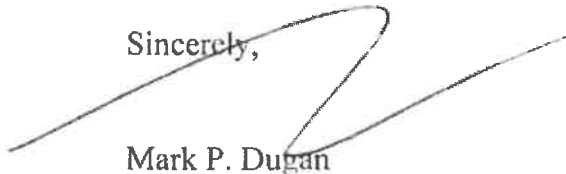
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Mr. Sean Sullivan
April 20, 2022
Page 3

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 Township of Clark to deny access. 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 P.O. Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at <https://nam12.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.state.nj.us%2Fgrc&data=04%7C01%7Cmpd%40tbwdlaw.com%7C1f03b64cfe504a8abdeb08d969857a9f%7C5f51087d3109471d86b1eddc5fcf066a%7C0%7C0%7C637656844432475041%7CUnknown%7CTWfPbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzliLjBjBTil6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=4RVjHViJikvJOH%2F%2FIcpc4cP1V6Es1RgahK18CAOPq6g%3D&reserved=0>. The GRC 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.

I trust that the foregoing has been responsive.

Sincerely,



Mark P. Dugan

c Clerk, Township of Clark
Business Administrator,
Township of Clark

Vendor Range: NJ MUN SELF INS JOINT INS.FUND to NJ MUN SELF INS JOINT INS.FUND										Status: Active	
Report Type: All										Include Open Requisitions: N	
Threshold Amount: 0.00		Include Tax Id: Y		Contracts: N		Bid: Y	State: Y	Other: Y	Exempt: Y		
Date Range Type: Both		First Enc Date Range: 01/01/20 to 12/31/20				Paid Date Range: 01/01/20 to 12/31/20					
Vendor # Name			Status		1099 Type		Tax Id		1099		
First P.O. #		Item Description		Prch. Type Status		Invoice		Amount		Excl	
Enc Date Contract Id		Account Type		Charge Account		Account Description					
N0017 NJ MUN SELF INS JOINT INS.FUND Active											
01/03/20 20-00034		1 1ST INSTALLMENT ASSESSMENT		Other		Pd Ck: 26310 01/14/20		75,371.00			
		Budget 0-01-23-210-223				Ins. & Bonding: Misc. Other Expenses					
02/25/20 20-00598		1 SECOND INSTALLMENT ASSESSMENT		Other		Pd Ck: 26620 02/27/20		75,371.00			
		Budget 0-01-23-210-223				Ins. & Bonding: Misc. Other Expenses					
04/07/20 20-00957		1 THIRD INSTALLMENT ASSESSMENT		Other		Pd Ck: 26805 04/07/20		75,371.00			
		Budget 0-01-23-210-223				Ins. & Bonding: Misc. Other Expenses					
06/01/20 20-01471		1 FOURTH INSTALLMENT ASSESSMENT		Other		Pd Ck: 27274 06/01/20		75,369.00			
		Budget 0-01-23-210-223				Ins. & Bonding: Misc. Other Expenses					
Total Open P.O.: Bid:		0.00		State:		0.00		Other:		0.00	
Total Paid P.O.:		0.00				0.00		301,482.00		0.00	
Vendor P.O. Total:		0.00				0.00		301,482.00		0.00	
Total Vendors:		1		Total Open P.O.:		0.00		Total Paid P.O.:		301,482.00	
								Total Open & Paid:		301,482.00	

Clerk's Dept.

From: Sean Sullivan <SSULLIVAN@njadvancemedia.com>
Sent: Wednesday, April 20, 2022 2:24 PM
To: Clerk's Dept.
Subject: Re: OPRA request

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.

If you think you can provide those records in a timely manner, I am very amenable to reducing the scope. Thanks so much.

--Sean

From: Clerk's Dept. <clerk@ourclark.com>
Date: Wednesday, April 20, 2022 at 1:04 PM
To: Sean Sullivan <SSULLIVAN@njadvancemedia.com>
Subject: RE: OPRA request

Thank you. 10:00 Monday is good. Yes, the elimination of MVA and workers comp significantly reduces the pool.

So, to confirm your request is amended to request all tort claims sent to the JIF in 2020 and exclude MVA and workers comp.

Edith L. Merkel, RMC
Township Clerk
Township of Clark
430 Westfield Ave.
Clark, NJ 07066
(732) 388-3669

From: Sean Sullivan <SSULLIVAN@njadvancemedia.com>
Sent: Wednesday, April 20, 2022 12:43 PM
To: Clerk's Dept. <clerk@ourclark.com>
Subject: Re: OPRA request

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If we were to eliminate motor vehicles and workers comp claims, would that significantly reduce the pool of responsive documents? I am amenable to reducing it further. Not trying to make you folks miserable!

Does 10 a.m. Monday work? I am flexible.

Best,
--Sean.

From: Clerk's Dept. <clerk@ourclark.com>
Date: Wednesday, April 20, 2022 at 12:38 PM
To: Sean Sullivan <SSULLIVAN@njadvancemedia.com>
Subject: RE: OPRA request

Thank you. Monday works. Our regular business hours are 8:30 am to 4:00 pm. We are located in room 28 in the Municipal Building.

I have another question regarding the portion of the request that states "Any claims made by the township to the JIF during 2020". Do you want all motor vehicle accident claims, all tort claims and all workers comp claims? Our search has produced approximate 1000 pages so far. In addition, the workers comp claims must be individually reviewed by the township attorney to redact HIPAA protected information. Please either confirm that you want all of the documents mentioned or narrow the scope.

Thank you,

Edith L. Merkel, RMC
Township Clerk
Township of Clark
430 Westfield Ave.
Clark, NJ 07066
(732) 388-3669

From: Sean Sullivan <SSULLIVAN@njadvancemedia.com>
Sent: Wednesday, April 20, 2022 11:56 AM
To: Clerk's Dept. <clerk@ourclark.com>
Subject: Re: OPRA request

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.

Hello. Thanks for the timely response. I am available to review/record the audio on Monday. Please let me know if there is a time that works best for you.

If you are unable to provide the material today, I am willing to grant an extension.

Thanks kindly,
--Sean.

From: Clerk's Dept. <clerk@ourclark.com>
Date: Tuesday, April 19, 2022 at 5:23 PM
To: Sean Sullivan <SSULLIVAN@njadvancemedia.com>
Subject: RE: OPRA request

To: Sean Sullivan, NJ Advance Media
From: Edith Merkel, Township Clerk, Township of Clark
Re: OPRA
Date: April 19, 2022

The Township of Clark received your Open Public Records Act (OPRA) request on April 7, 2022 after the close of business. The official Records Custodian, Edith Merkel, received your OPRA request on April 8, 2022. As such, the seven (7) business day deadline to respond to your request is April 20, 2022. This response to your request is being provided to you on the 6th business day after the custodian's receipt of said request.

The Township Attorney will be responding to most of the items listed on your request dated April 7, 2022 (received April 8th).

This first response is regarding the audio recording of the February 3, 2020 Special Council Meeting. I have a copy of the recording available for you, however the equipment I use to record is part of an FTR System. FTR software is required in order to play the CD. Of course you welcome to that CD but in all likelihood you will not be able to hear it. You are welcome to come to my office, room 28 in Town Hall, 430 Westfield Ave., Clark to listen to the recording and save it in a format that suits your needs. There is no video of meetings held on the first Monday of the month. Meetings held on the Third Monday of the month, held in the Public Safety Building, are video recorded.

The Administration is compiling the portion of the request that states "Any claims made by the township to the JIF during 2020" and "A copy of Clark Township's current policy with the JIF" This task should be completed by tomorrow. If they are unable to complete the task by the close of business tomorrow are you willing to grant an extension of one week?

From: Sean Sullivan <SSULLIVAN@njadvancemedia.com>
Sent: Thursday, April 07, 2022 5:45 PM
To: Clerk's Dept. <clerk@ourclark.com>
Subject: OPRA request

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Hello. This is a request for public records under the Open Public Records Act.

I am seeking:

Any communications (including email or written) between Clark Township or Clark officials and its Joint Insurance Fund (JIF) regarding the 2020 settlement with former Police Lt. Antonio Manata.

— Receipts for payments made to the JIF during 2020.

— Any claims made by the township to the JIF during 2020.

— A copy of Clark Township's current policy with the JIF.

- A copy of the video and/or audio recording of the February 3, 2020 special council meeting.

I am requesting these records in electronic format, deliverable via e-mail. If you are unable to provide any of these records via e-mail, I will arrange to pick them up in person from the township.

If you have any questions about the scope and nature of this request, please contact me at 201 388 8912.

Thank you,
Sean Sullivan
Reporter
NJ Advance Media

Clerk's Dept.

From: Sean Sullivan <SSULLIVAN@njadvancemedia.com>
Sent: Thursday, April 21, 2022 1:54 PM
To: Clerk's Dept.
Subject: Re: OPRA response

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Hi Edith—

I would like to first state that I have been impressed by the responsiveness by your office to the public records requests we have filed. The professionalism you have displayed is exactly what citizens should expect from their local government.

I would like you to provide the following message to the township attorney:

Please seek immediate remedial help in public records law. The copy of the Manata settlement, which we had already obtained in full, demonstrates that you have a deficient understanding in how OPRA works.

I have sought the assistance of my news organization's legal council because of how poorly township council responded to my request. You are, frankly, out of compliance with the law. Do better.

All best,
--Sean.

From: Clerk's Dept. <clerk@ourclark.com>
Date: Wednesday, April 20, 2022 at 5:02 PM
To: Sean Sullivan <SSULLIVAN@njadvancemedia.com>
Subject: RE: OPRA response

To: Sean Sullivan, NJ Advance Media
From: Edith Merkel, Township Clerk, Township of Clark
Re: OPRA
Date: April 20, 2022

The Township of Clark received your Open Public Records Act (OPRA) request on April 7, 2022 after business hours. The official Records Custodian, Edith Merkel, received your OPRA request on April 8, 2022. As such, the seven (7) business day deadline to respond to your request is April 20, 2022. This response to your request is being provided to you on the 7th business day after the custodian's receipt of said request.

The Township Attorney's response (DOC001.pdf) to your request is attached.

Predicated upon N.J.S.A. 47:1A-10 and the opinions of the Supreme Court of New Jersey in Libertarians for Transparent Government v. Cumberland County, (A-34-20) (084956) and Richard Rivera v. Union County Prosecutor's Office, (A-58-20) (084867), and the opinion of the Superior Court of New Jersey, Appellate

Division, in Asbury Park Press v. County of Monmouth, 406 N. J. Super. 1 (App. Div. 2009), see enclosed redacted Confidential Settlement Agreement and Release. (second attachment)

Your appointment to listen and/or record the audio of the February 3, 2020 Special Council meeting is set for 10:00 am on Monday, April 25, 2022.

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 Township of Clark to deny access. 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 P.O. 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](http://www.state.nj.us/grc). The GRC 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.

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Reporter
NJ Advance Media

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To: Sean Sullivan
Subject: RE: OPRA response

Received and forwarded to Township Attorney.

Edith L. Merkel, RMC
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Township of Clark
430 Westfield Ave.
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(732) 388-3669

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To: Sean Sullivan <SSULLIVAN@njadvancemedia.com>
Subject: RE: OPRA response

Clerk's Dept.

From: Microsoft Outlook
To: Sean Sullivan
Sent: Thursday, April 21, 2022 3:19 PM
Subject: Relayed: RE: OPRA response

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

Sean Sullivan (SSULLIVAN@njadvancemedia.com)

Subject: RE: OPRA response