



MORRIS COUNTY PROSECUTOR'S OFFICE

Administration & Records Bldg.

P.O. Box 900

Morristown, New Jersey 07963-0900

FREDRIC M. KNAPP

PROSECUTOR

(Attorney #013641978)

Telephone: (973) 285-6200

Fax: (973) 285-6226

www.morrisprosecutor.org

ProsecutorOPRA@co.morris.nj.us

July 20, 2020

VIA Email:

ASK NJ Media Co.

opra+request-14548-8c6ea5a8@requests.opramachine.com

RE: MCPO OPRA File Number 20-0158

Dear ASK NJ Media Co.:

The Morris County Prosecutor's Office received your Open Public Records Act (OPRA) and Common Law Right of Access request dated June 29, 2020, on June 29, 2020, and it was received by the records custodian on the same date. During the present declared state of emergency, access to records has been extremely limited. Accordingly, our Office processed and responded to your request as soon as reasonably possible. See N.J.S.A. 47:1A-5(i)(2). You requested the following:

1. Copies of any police CAD report(s) with narrative(s), police incident reports, arrest report(s) criminal charge complaint(s), affidavit(s) of probable cause, and indictments against Mr. O Connor.
2. Copies of any final judgement/disposition of the criminal charge complaint(s) that were filed against defendant Mr. O Connor.

It appears that Mr. O Connor appeared before Judge Critchley, J.S.C. on 6-29-2020. Mr. Justin Tellone is the assistant prosecutor for the case.

The following record is being provided and are responsive to your request:

1. Complaint—Warrant and Affidavit of Probable Cause 1409-W-2020-000121 (4 pages).

Note: *Personal identifying information redacted pursuant to N.J.S.A. 47:1A-1 and N.J.S.A. 47:1A-5(a). Booking Photographs (aka "Mug Shots") redacted pursuant to Executive Orders Nos. 9 (Gov. Hughes, 1963); 123 (Gov. Kean, 1983); 69 (Gov. Whitman, 1997); and 21 (McGreevey, 2002).*

Regarding your request for “indictments against Mr. O’Connor...any final judgement/disposition of the criminal charge complaint(s),” we are unable to locate any records responsive to your request.

Your request for law enforcement reports is denied on the ground that “police department continuation reports and incident reports are criminal investigatory records, they are not government records as defined under OPRA.” Morgano v. Essex County Prosecutor’s Office, GRC Complaint No. 2007-156 (February 2009). Criminal investigatory records are exempt from disclosure under OPRA pursuant to N.J.S.A. 47:1A-1.1 to -13, and Janeczko v. Department of Law and Public Safety, Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80 (affirmed on appeal May 2004). Criminal investigatory records are defined as records that are held by a law enforcement agency, which pertain to any criminal investigation and of which are not required by law to be made, maintained or kept on file. Ibid. A criminal investigatory record remains exempt from disclosure even after the criminal investigation has been closed. West Solloway v. Bergen County Prosecutor’s Office Custodian of Records, GRC Complaint No. 2011-39; Woojin Hwang v. Bergen County Prosecutor’s Office Custodian of Records, GRC Complaint No. 2011-348; Janeczko, GRC Complaint Nos. 2002-79 and 2002-80 (affirmed on appeal May 2004); Andrew Johnson/Press of Atlantic City v. New Jersey Division of State Police, Custodian of Record, GRC Complaint No. 2004-46. Cf. R. 1:38-3(f)(3) as to investigative police reports under the control of a court, unless they have been admitted into evidence.

Moreover, the New Jersey Supreme Court and the New Jersey Government Records. Council have both held that records which are not “required by law to be made, maintained or kept on file,” are exempt from disclosure under OPRA when they pertain to any criminal investigation or related civil enforcement proceeding. See N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 556 (2017) (citing N.J.S.A. 47:1A-1.1); see also, Kovacs v. Irvington Police Department, GRC Complaint No. 2014-196 (January 2015) (holding and observing that the Government Records Council “has long held that police incident reports” are exempt from disclosure under OPRA as “criminal investigatory records” when they pertain to any criminal investigation or related civil enforcement proceeding, citing Nance v. Scotch Plains Police Dep’t, GRC Complaint No. 2003-125 (January 2005); Rivera v. Passaic Cnty. Sheriff’s Office, GRC Complaint No. 2010-152 (May 2011); and Connelly v. Twp. of Montville, GRC Complaint No. 2013-59 (September 2013)); Rivera v. Town of West New York, GRC Complaint No. 2010- 208 (February 2013), citing Bart v. City of Passaic, GRC Complaint No. 2007-162 (April 2008); and Executive Order No. 26 (Gov. McGreevy 2002); Hockensmith v. Atlantic Cnty. Prosecutor’s Office, GRC Complaint No. 2014-288 (Mar. 2015) (observing that under OPRA “criminal investigatory records include records involving all manner of crimes, resolved or unresolved, and includes *information that is part and parcel of an investigation, confirmed and unconfirmed.*”) (emphasis added and internal citations omitted).

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).

The Office of the Morris County Prosecutor reserves the right to raise any other grounds for denial not raised in this response. Failure of the Office of the Morris County Prosecutor to assert an exception or privilege does not act as a waiver of any grounds for denial. Furthermore, a reviewing Court or the Government Record's Council ("GRC") may deem a denial of access to be authorized on grounds other than those advanced by a custodian. Paff v. Twp. of Plainsboro, A-2122-05T2, 2007 WL 957289, at *2 (N.J. Super. Ct. App. Div. Apr. 2, 2007) affirming, Paff v. Township of Plainsboro, GRC Complaint No. 2005-29 (March 2006).

You have a right to challenge the decision by the Office of the Morris County Prosecutor 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 GRC by completing Denial of Access Complaint Form. You may contact the GRC by toll-free by telephone at 866-850-0511, by mail at PO Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or on the GRC's website at www.state.nj.us/grc. The Council can also answer other questions about the law.

Note that any challenge to a denial of a request for records under the common law cannot be made to the GRC, as the GRC only has jurisdiction to adjudicate challenges to denials of OPRA requests. A challenge to the denial of access under the common law can be made by filing an action in Superior Court. All questions regarding complaints filed in Superior Court should be directed to the New Jersey Superior Court Clerk.

This OPRA request is now deemed answered and closed.

Sincerely,

/s/ Thomas C. Schmid

Thomas C. Schmid
Assistant Prosecutor || Custodian of Records

Knab, Meghan G.

From: ASK NJ Media Co. <opra+request-14548-8c6ea5a8@requests.opramachine.com>
Sent: Monday, June 29, 2020 2:52 PM
To: Prosecutors OPRA Requests
Subject: OPRA request - Mr. O Connor

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,

This is a request for public records made under OPRA and the common law right of access. I am not required to fill out an official form. Please acknowledge receipt of this message.

Records requested:

Please send your response in PDF form.

1. Copies of any police CAD report(s) with narrative(s), police incident reports, arrest report(s) criminal charge complaint(s), affidavit(s) of probable cause, and indictments against Mr. O Connor.
2. Copies of any final judgement/disposition of the criminal charge complaint(s) that were filed against defendant Mr. O Connor.

It appears that Mr. O Connor appeared before Judge Critchley, J.S.C. on 6-29-2020.
Mr. Justin Tellone is the assistant prosecutor for the case.

Please include a Record Index with your response.

*A record index that identifies each record requested and the specific legal basis for a denial of access (including redactions) to each record.

Yours faithfully,

ASK NJ Media Co.

Please use deliver records electronically via email to the below UNIQUE address for all replies to this request:
opra+request-14548-8c6ea5a8@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:

https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fopramachine.com%2Fchange_request%2Fnew%3Fbody%3Dmcpo&data=01%7C01%7CMKnab%40co.morris.nj.us%7Cc1a3b0914c7e4bb0ff7108d81c5d97ca%7Cec2ce8c138394008b949e2b17cfa906d%7C0&sd=irPamBy0%2BeY2%2BEDVQG5vt0Efhxfm5%2Fb6jMJRgjq7d04%3D&reserved=0

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View this OPRA request & responses online:

https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fopramachine.com%2Frequest%2Fmr_o_connor&data=01%7C01%7CMKnab%40co.morris.nj.us%7Cc1a3b0914c7e4bb0ff7108d81c5d97ca%7Cec2ce8c138394008b949e2b17cfa906d%7C0&sdata=vMPRzVVoqMatGPGcTY8jM4PEkp9HzaC5ZHKvHgwXb0%3D&reserved=0

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.

COMPLAINT - WARRANT

COMPLAINT NUMBER			
1409	W	2020	000121
COURT CODE	PREFIX	YEAR	SEQUENCE NO.
DOVER MUNICIPAL COURT 37 N SUSSEX ST DOVER NJ 07801-0000 973-366-2200 COUNTY OF: MORRIS			
# of CHARGES 5	CO-DEFTS	POLICE CASE #: 2020-08111	
COMPLAINANT NAME: DET. SGT. RAE 500 WEST HANOVER AVENUE PARSIPPANY NJ 07954		DEFENDANT INFORMATION SEX: M EYE COLOR: BLUE DOB: ███/1962 DRIVER'S LIC. #: SOCIAL SECURITY #: ██████████ DL STATE: TELEPHONE #: () SBI #: 338924D LIVESCAN PCN #: 140003002397	

THE STATE OF NEW JERSEY

VS.

THOMAS D OCONNOR

ADDRESS: **62 EAST BLACKWELL STREET, APT. B**
DOVER NJ 07801-0000

By certification or on oath, the complainant says that to the best of his/her knowledge, information and belief the named defendant on or about **06/05/2020** in **DOVER TOWN**, **MORRIS** County, **NJ** did: WITHIN THE JURISDICTION OF THIS COURT, DID PURPOSELY PREVENT OR ATTEMPT TO PREVENT A LAW ENFORCEMENT OFFICER FROM EFFECTING AN ARREST, INVOLVING THE USE OR THREATENED USE OF PHYSICAL FORCE OR VIOLENCE AGAINST THE LAW ENFORCEMENT OFFICER, OR INVOLVING THE USE OF ANY OTHER MEANS TO CREATE A SUBSTANTIAL RISK OF CAUSING PHYSICAL INJURY TO A PUBLIC SERVANT OR ANOTHER, SPECIFICALLY BY THROWING OBJECTS, SPITTING, BITING, AND ATTEMPTING TO STAB LAW ENFORCEMENT OFFICERS ATTEMPTING TO EFFECTUATE HIS ARREST, IN VIOLATION OF N.J.S. 2C:29-2A(3), A CRIME OF THE THIRD DEGREE.

WITHIN THE JURISDICTION OF THIS COURT, DID THROW A BODILY FLUID, SPECIFICALLY SALIVA AND/OR BLOOD, AT A MUNICIPAL LAW ENFORCEMENT OFFICER, SPECIFICALLY DETECTIVE KEVIN BEAL OF THE MORRISTOWN POLICE DEPARTMENT, WHILE IN THE PERFORMANCE OF HIS DUTIES OR OTHERWISE DID PURPOSELY SUBJECT SAID EMPLOYEE TO CONTACT WITH A BODILY FLUID, IN VIOLATION OF N.J.S. 2C:12-13, A CRIME OF THE

in violation of:

Original Charge	1) 2C:29-2A(3)(A)	2) 2C:12-13	3) 2C:12-1B(5)(A)
Amended Charge			

CERTIFICATION: I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signed: **DET JAMES RAE** Date: **06/22/2020**

You will be notified of your **Central First Appearance/CJP** date to be held at the **Superior Court** in the county of **MORRIS** at the following address: **MORRIS SUPERIOR COURT**
WASHINGTON & COURT STREETS P.O. BOX 910 MORRISTOWN NJ 07963-0910
Date of Arrest: **06/05/2020** Appearance Date: Time: Phone: **862-397-5700**

PROBABLE CAUSE DETERMINATION AND ISSUANCE OF WARRANT

☐ Probable cause **IS NOT** found for the issuance of this complaint.

Signature of Court Administrator or Deputy Court Administrator Date Signature of Judge Date

☒ Probable cause **IS** found for the issuance of this complaint. **CECILIA GUZMAN JUDICIAL OFFICER** **06/22/2020**
Signature and Title of Judicial Officer Issuing Warrant Date

TO ANY PEACE OFFICER OR OTHER AUTHORIZED PERSON: PURSUANT TO THIS WARRANT YOU ARE HEREBY COMMANDED TO ARREST THE NAMED DEFENDANT AND BRING THAT PERSON FORTHWITH BEFORE THE COURT TO ANSWER THE COMPLAINT.

Bail Amount Set: by: (if different from judicial officer that issued warrant)

☐ Domestic Violence – Confidential

☐ Related Traffic Tickets or Other Complaints

☒ Serious Personal Injury/ Death Involved

Special conditions of release:

- ☐ No phone, mail or other personal contact w/victim
- ☐ No possession firearms/weapons
- ☐ Other (specify):

ORIGINAL

COMPLAINT - WARRANT

COMPLAINT NUMBER

1409**W****2020****000121**

STATE V.

THOMAS D OCONNOR

COURT CODE

PREFIX

YEAR

SEQUENCE NO.

FOURTH DEGREE.

WITHIN THE JURISDICTION OF THIS COURT, DID ATTEMPT TO CAUSE OR PURPOSELY, KNOWINGLY, OR RECKLESSLY CAUSE BODILY INJURY TO A LAW ENFORCEMENT OFFICER ACTING IN THE PERFORMANCE OF HIS DUTIES WHILE IN UNIFORM OR EXHIBITING EVIDENCE OF HIS AUTHORITY OR BECAUSE OF HIS STATUS AS A LAW ENFORCEMENT OFFICER, SPECIFICALLY BY BITING DETECTIVE KEVIN BEAL OF THE MORRISTOWN POLICE DEPARTMENT IN THE LEG, IN VIOLATION OF N.J.S. 2C:12-1B(5)(A), A CRIME OF THE FOURTH DEGREE.

WITHIN THE JURISDICTION OF THIS COURT, DID PURPOSELY INFLICT HARM UPON A DOG OWNED OR USED BY A LAW ENFORCEMENT AGENCY, SPECIFICALLY MORRIS COUNTY SHERIFF'S OFFICE K9 KAI, IN VIOLATION OF N.J.S. 2C:29-3.1B, A CRIME OF THE FOURTH DEGREE.

WITHIN THE JURISDICTION OF THIS COURT, DID PURPOSELY OR KNOWINGLY DAMAGE TANGIBLE PROPERTY OF ANOTHER, OR DID RECKLESSLY OR NEGLIGENTLY DAMAGE TANGIBLE PROPERTY OF ANOTHER IN THE EMPLOYMENT OF A FLOOD, SPECIFICALLY BY CAUSING WATER TO LEAK FROM HIS APARTMENT THROUGH THE CEILING OF THE APARTMENT BELOW HIM, AND DID CAUSE PECUNIARY LOSS OF \$2,000.00 OR MORE, IN VIOLATION OF N.J.S. 2C:17-3A(1), A CRIME OF THE THIRD DEGREE.

Original Charge

4) **2C:29-3.1B**5) **2C:17-3A(1)**

Amended Charge

COMPLAINT - WARRANT

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NJ/CDR2 1/1/2017

Affidavit of Probable Cause

COMPLAINT NUMBER			
1409	W	2020	000121
COURT CODE	PREFIX	YEAR	SEQUENCE NO.
DOVER MUNICIPAL COURT			
37 N SUSSEX ST			
DOVER NJ 07801-0000			
973-366-2200 COUNTY OF: MORRIS			
# of CHARGES 5	CO-DEFTS	POLICE CASE #: 2020-08111	
COMPLAINANT DET. SGT. RAE			
NAME: 500 WEST HANOVER AVENUE			
PARSIPPANY NJ 07954			
DEFENDANT INFORMATION			
SEX: M EYE COLOR: BLUE DOB: █ /1962			
DRIVER'S LIC. #.			
SOCIAL SECURITY #: █ SBI #: 338924D			
TELEPHONE #: ()			
LIVESCAN PCN #: 140003002397			

THE STATE OF NEW JERSEY

VS.

THOMAS D OCONNOR

ADDRESS:

62 EAST BLACKWELL STREET, APT. B

DOVER

NJ 07801-0000

Purpose: This Affidavit/Certification is to more fully describe the facts of the alleged offense so that a judge or authorized judicial officer may determine probable cause.

1. Description of relevant facts and circumstances which support probable cause that (1) the offense(s) was committed and (2) the defendant is the one who committed it:

On June 5, 2020, at approximately 8:02AM, tenant R.A. reported that his upstairs neighbor had flooded his apartment and that water was come down through the ceiling. As a result, law enforcement responded to the scene and determined the possibly flooded apartment to be 62B E Blackwell Street, Dover, New Jersey, which belonged to the defendant. The defendant refused to open the door to speak to officers. He was observed naked and exposing himself through the window. He attempted to spit at the officers on scene and had a combative demeanor.

As a result, the assistance of the Morris County Sheriff's Office Emergency Response Team (SERT) was requested. Numerous attempts were made to contact the defendant to request that he exit his apartment, but the defendant was non-responsive. He was observed throwing items out of his window. Entry into the apartment was made by SERT officers. Upon the officers making entry, the defendant began to throw furniture and glass picture frames at the officers. He then attempted to use broken pieces of glass from the picture frames to stab at the officers. The defendant did not listen to the verbal commands made by the SERT officers.

As a result, and after verbal warnings, Morris County Sheriff's Office K9 Kai was deployed to assist in effectuating the defendant's arrest. The defendant punched K9 Kai in the side of the head with his hand as well as a hard object. Also while attempting to effectuate the defendant's arrest, the defendant spit bodily fluids, specifically saliva and/or blood, at Detective Kevin Beal of the Morristown Police Department, a SERT officer. The bodily fluids hit Det. Beal's face and body. The defendant also bit Det. Beal's inner thigh, which Det. Beal was able to feel through his clothing.

Following the deployment of K9 Kai, the defendant was able to be taken into custody by the SERT officers and was removed from the apartment.

The water damage caused to the apartment building is estimated to be in excess of \$2,000.00.

Affidavit of Probable Cause

Affidavit of Probable Cause

COMPLAINT NUMBER

1409

W

2020

000121

COURT CODE

PREFIX

YEAR

SEQUENCE NO.

THE STATE OF NEW JERSEY

VS.

THOMAS D OCONNOR

2. I am aware of the facts above because: (Included, but not limited to: your observations, statements of eyewitnesses, defendant's admission, etc.)

I am aware of the facts above based on my observations, observations of other law enforcement officers, and reports of eyewitnesses.

3. If victim was injured, provide the extent of the injury:

Bodily injury, pain.

Certification:

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signed: DET JAMES RAE LAW ENFORCEMENT OFFICER

Date: 06/22/2020

Affidavit of Probable Cause

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1/1/2017