



OFFICE OF THE COUNTY PROSECUTOR
JENNIFER WEBB-MCRAE
CUMBERLAND COUNTY PROSECUTOR

Harold B. Shapiro

First Assistant Prosecutor

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Chief of Investigators

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Telephone (856)453-0486
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October 11, 2023

Via email to: opra+request-53598-82xxxxxx@xxxxxxxx.xxramachine.com

Re: Records request

Dear Ms. Erin:

Please accept this letter in response to your records request dated October 1, 2023 and submitted via email. Your request is for the following records: “(1) E-ticket(s) related to the 12/05/2022 arrest of defendant Jason Samaritano including the date the E-Ticket(s) were created and who created them; (2) Copy of AP Snock's SDAG oath dated 12/02/2022 by DAG Jeff Barile; (3) Copies of all search warrants, arrest warrants and seizure warrants associated with the 12/05/2022 arrest of defendant Jason Samaritano; (4) Emails between NJ State Police Officers and AP Snock relating to the 12/05/2022 arrest of defendant Jason Samaritano.”

With regard to request (1), this request is denied as calling for criminal investigatory records which are exempt from release under the provisions of the Open Public Records Act. Furthermore, a criminal investigatory record remains exempt from disclosure even after the criminal investigation has been closed. Donna Janeczko v. New Jersey Department of Law and Public Safety, Division of Criminal Justice, Custodian of Record, GRC Complaint Nos. 2002-79

and 2002-80; Andrew Johnson/Press of Atlantic City v. New Jersey Division of State Police, Custodian of Record, GRC Complaint No. 2004-46.

Once more, this request is also denied as improperly calling for research to be conducted that is not required of a records custodian in order to determine which records “relate to” your specified subject matter. In this request, you call for all “E-ticket(s)” which “relate to” your specified subject matter, as well as information in the form of the date the record was created and who created the record. If a request does not name specifically identifiable records or is overly broad, a custodian may deny access pursuant to the following court decisions: MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J.Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Records custodians are required to search their files for responsive records, but not to conduct any research on behalf of the requestor. See Donato v. Tp of Union, GRC Complaint No. 2005-182, Analysis (February 28, 2007). Nor are custodians required to create new documents in response to requests.

With regard to request (2), please find all response records attached as Responsive Records A.

With regard to request (3), which is for “all search warrants, arrest warrants and seizure warrants” associated with your specified subject matter, this request is denied as calling for criminal investigatory records which are exempt from release under the provisions of the Open Public Records Act. Furthermore, a criminal investigatory record remains exempt from disclosure even after the criminal investigation has been closed. Donna Janeczko v. New Jersey Department

of Law and Public Safety, Division of Criminal Justice, Custodian of Record, GRC Complaint Nos. 2002-79 and 2002-80; Andrew Johnson/Press of Atlantic City v. New Jersey Division of State Police, Custodian of Record, GRC Complaint No. 2004-46.

However, in the interest of transparency, I have included as Responsive Records B the Complaint-Warrants that were issued with regard to the defendant Jason Samaritano in your referenced matter, which both include an Affidavit of Probable Cause section which provide further details about this criminal matter.

Once more, for the sake of clarity, please note that no search warrant was ever issued by the court in this matter. Records previously provided indicate that a Communications Data Warrant (CDW) was prepared with regard to this matter - however, to the extent that this office possesses responsive records regarding this aspect of your request, that record is exempt from release as advisory/deliberative materials where solely draft documents were prepared and never issued by the court. Advisory and deliberative materials are exempt from disclosure pursuant to the statutory exemption from the Open Public Records Act for records that constitute inter-agency or intra-agency advisory, consultative, or deliberative material. N.J.S.A. 47:1A-1.1. See also In Re the Liquidation of Integrity Insurance Company, 165 N.J. 75 (2000) and Education Law Center v. NJ Department of Education, 198 N.J. 274 (2009). Notably, in Educ. Law Ctr. v. N.J. Dep't of Educ., 198 N.J. 274 (2009), the Court held that "a record, which contains or involves factual components, is entitled to deliberative-process protection when it was used in the decision-making process and its disclosure would reveal deliberations that occurred during that process". Id. at 280.

With regard to request (4) that calls for all emails sent between your named parties "relating to" the arrest of Jason Samaritano which occurred on 12/05/2022 - this request is most analogous to the matter of Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-08 (April

2010), where a requestor requested all emails from a specified sender/recipient ranging from a specified time period. Seeking to curb further ambiguity with regard to what constitutes a valid request for emails under the Open Public Records Act, then, the Government Records Counsel in Elcavage v. West Milford Township (Passaic), GRC Complaint No. 2009-08 (April 2010), clearly stated: "In accord with MAG, supra, and its progeny, in order to specifically identify an e-mail, OPRA requests must contain (1) the content and/or subject of the e-mail, (2) the specific date or range of dates during which the e-mail was transmitted or the emails were transmitted, and (3) a valid e-mail request must identify the sender and/or the recipient thereof".

Accordingly, where your request fails to provide a specific date or range of dates during which the email was transmitted or the emails were transmitted, this request is denied as an improperly posed request for email records. Once more, to the extent that you have identified the content or the subject of the email, you have not provided any terminology that could be utilized in order to perform a keyword search of this office's electronically stored email files, and instead you have called for research to be conducted by this Records Custodian in the form of what emails in the possession of this office "relate to" the arrest that occurred on December 5, 2022 of your named individual. If a request does not name specifically identifiable records or is overly broad, a custodian may deny access pursuant to the following court decisions: MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166 (App. Div. 2007), and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Records custodians are required to search their files for responsive records, but not to conduct any research on behalf of

the requestor. See Donato v. Tp of Union, GRC Complaint No. 2005-182, Analysis (February 28, 2007). Nor are custodians required to create new documents in response to requests.

Finally, it should be noted that on September 22, 2023, this Office provided a response to your prior OPRA request which was dated September 4, 2023. In that request, you requested pursuant to the Open Public Records Act all emails to or from assistant prosecutor Lesley Snock “regarding” Jason Samaritano from December 5, 2022 to February 5, 2023. In that response, this office provided you all responsive records, utilizing the keyword “Jason Samaritano” in order to conduct that electronic search of this office’s email records. Accordingly, your current request, although improperly posed and thus denied under the provisions of OPRA, appears to be calling for records that would have been previously provided in response to your prior OPRA request dated September 4, 2023, to the extent that you were provided all responsive emails which occurred between the date range of December 5, 2022 to February 5, 2023.

The Cumberland County Prosecutor’s Office reserves the right to raise any other ground for denial not raised in this response. The failure of the Cumberland County Prosecutor’s Office to assert an exception or privilege does not act as a waiver of any ground for denial. 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 Cumberland County Prosecutor’s Office to deny access. At your option, you may institute a proceeding in the Superior Court of New Jersey. All questions regarding complaints filed in Superior Court should be directed to the Court.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen C. Sayer", is written over the printed name.

Stephen C. Sayer [114352015]

Assistant Prosecutor

Alternate Records Custodian