



OFFICE OF THE HUDSON COUNTY PROSECUTOR

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March 10, 2025

VIA ELECTRONIC MAIL ONLY

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Good Citizen

No Address Provided

No Phone Number Provided

Re: February 27, 2025 OPRA/CL Request for Arrest Report, Police Report, BWC, and IA Reports on Sgt. Rodriguez 2024

Dear Good Citizen,

The Hudson County Prosecutor's Office (hereinafter "HCPO") is in receipt of your email request, dated February 27, 2025 under the New Jersey Open Public Records Act, N.J.S.A. 47: 1A-1, et. seq., (hereinafter "OPRA") and the Common Law (hereinafter "CL"). An acknowledgement was sent on February 28, 2025. A copy of your request (hereinafter the "Request") is attached for your easy reference.

The Request was reviewed under OPRA and the CL. For the reasons set forth below, the HCPO is unable to provide records related to the Request in accordance with statutory authority and well-settled law.

The Request

A proper OPRA request "shall be submitted by a requestor in the form adopted by the custodian and the custodian may deny a request that is incomplete, except that a requestor indicating the request is being submitted anonymously shall not be grounds for denial. A completed form adopted by the custodian, a letter, or 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. N.J.S.A. 47:1A-5(f). Here, the Request was submitted anonymously under the pseudonym "Good Citizen" via OPRA Machine with the three certifications. Therefore, the Request is valid.

As an initial matter, the Request sought the following records from the HCPO:

1. Police arrest report authored by Sgt. Ruben Rodriguez on August 8, 2024 in which he arrested and charged an individual with aggrieved assault.
2. Police report authored by Officer Sebastian Montes in relation to the arrest incident that occurred with SGT Ruben Rodriguez on August 8, 2024.
3. Full Body camera footage of the incident as well. August 8, 2024 showing SGT Ruben Rodriguez making the arrest of the individual.
4. Any and all internal affairs reports relating to the same incident on August 8, 2024.

Immediately upon receipt of the Request, the HCPO commenced a review of our files for responsive records.

OPRA Analysis

Overly Broad and/or Vague Requests

Please note that overly broad and/or vague requests, including requests that use the terms, “any and all,” are improper, because such requests fail to specify identifiable government records. These overly broad and/or vague requests which require the Records Custodian to conduct research among all records maintained by the agency to locate and identify potentially responsive records, which makes such requests invalid under OPRA. See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534 (App. Div. 2005) and 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, 180 (App. Div. 2007); Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009). Requests for documents must identify with reasonable clarity the specific government records sought. Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). In this matter, the description “any and all” internal affairs reports is broad and vague therefore an invalid request under OPRA because it failed to identify specific records. A clarification was not requested because regardless of the clarification internal affairs records are exempt from OPRA as discussed below. Additionally, the HCPO conducted a criminal investigation, not an Internal Affairs Investigation into this matter.

Internal Affairs Reports

The Attorney General, as chief law enforcement officer of the state, general supervision of New Jersey criminal justice law enforcement agencies. *Criminal Justice Act of 1970*, N.J.S.A. 52:17B-97 to 117. On November 15, 2022 the Attorney General issued Attorney General Law Enforcement Directive No. 2022-14 *Transparency in Internal Affairs Investigations* under N.J.S.A. 40A:14-181, which is binding on all New Jersey law enforcement agencies effective January 1, 2023.

“The nature and source of internal allegations, the progress of internal affairs investigations, and the resulting materials are confidential information and remain exempt from access under the New

Jersey Open Public Records Act, N.J.S.A. 47:1A-1.1 to -13. Attorney General, Law Enforcement Directive No. 2022-14 (hereinafter “*Directive*”), § 9.6.1, (Nov. 15, 2022).

At the conclusion of the internal affairs investigation, the IA investigator shall submit the confidential *Investigative Report* and the disclosable *Summary and Conclusions Report*. *Directive* § 9.1.1. The *Summary and Conclusions Report* summarizes the case and provides conclusions of fact for each allegation. *Directive* § 9.1.1(b). The *Summary and Conclusions Report, Discipline Imposed* section should be completed once the discipline imposed becomes final. 9.1.1(b)(3). That occurs when the deadline for appeal has passed after a “Sustained finding” which refers to any finding shows a violation of any law, regulation, Attorney General, County Prosecutor, or agency directive/standard operating procedure/rule. *Directive* § 9.11.2 The *Summary and Conclusions Report* shall be released in response to a request made under the CL leading to a result on or after January 1, 2023, subject to mandatory disclosure pursuant to Section 9.11.2 commonly referred to as Major Discipline. *Directive* § 9.6.2(a)(1).

Since the HCPO conducted a criminal investigation, not an Internal Affairs Investigation into this matter, no Internal Affairs Reports are in HCPO possession. Similarly, since this criminal matter has not been adjudicated it has not reached the point where it becomes a final sustained finding. Therefore, since discipline has not been imposed a *Summary and Conclusions Report* would not have been completed by the agency’s IA investigator.

Access to Records of an Investigation in Progress

“Access to records involved in on-going investigations is not automatic.” O’Shea v. Twp. of W. Milford, 410 N.J. Super. 371, 377 (App. Div. 2009). The exemption may also be reference as the “investigation in progress” exemption. The “Ongoing Investigation” exemption may be invoked when “(1) the requested records ‘pertain to an investigation in progress by any public agency,’ (2) disclosure will ‘be inimical to the public interest,’ and (3) the records were not available to the public before the investigation began.” North Jersey Media Group, Inc. v. Township of Lyndhurst, 229 N.J. 541, 573 (2017) (quoting N.J.S.A. 47:1A-3(a)). “The HCPO is a government agency tasked with investigating, charging, and prosecuting individuals who are accused of committing crimes” See Aakash Dalal v. Hudson County Prosecutor’s Office, No. A-3567-22, 2024 WL 4901862, at *6 (N.J. Super. Ct. App. Div. Nov. 27, 2024).

The subject of the Request is the charging of Union City Police Sergeant Ruben Rodriguez. HCPO issued a Press Release on January 8, 2025 disclosing the required information under N.J.S.A. 47:1A-3(b). The investigation of the incident continues as of the date of this response.

Criminal Investigatory Record Exemption

Similarly, please be advised that under OPRA, most police investigatory reports, crash photos and videos, autopsy and medical reports, etc., are exempt from disclosure as criminal investigatory records. A “Criminal investigatory record” is defined as a record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to

any criminal investigation or related civil enforcement proceeding. N.J.S.A. 47:1A-1.1, N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 564 (2017). Therefore, because this matter resulted in criminal charges the Criminal Investigatory Record exemption is applicable, some records sought would be exempt from disclosure pursuant to OPRA.

N.J.S.A. 47:1-1A-9(a-b) Other Laws, Regulations, Privileges

OPRA does not abrogate any exemption of a public record or government record from public access under any other statute; resolution of either or both Houses of the Legislature; regulation promulgated under the authority of any statute or Executive Order of the Governor; Executive Order of the Governor; Rules of Court; any federal law; federal regulation; federal order; executive or legislative privilege or grant of confidentiality heretofore established or recognized by the Constitution of this State, statute, court rule or judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record. OPRA, N.J.S.A. 47:1A-9(a-b). Section 9a exempts from disclosure any information that is protected by any other state or federal statute, regulation, or executive order. Spillane v. New Jersey State Parole Bd., No. A-5089-14T2, 2017 WL 4171588, at *2 (N.J. Super. Ct. App. Div. Sept. 21, 2017).

Similarly, Section 9(b) exempts from disclosure any information that is protected by any executive or legislative privilege or grant of confidentiality established or recognized by the New Jersey Constitution, statute, court rule, or judicial case law, which privilege or grant of confidentiality may duly be claimed to restrict public access to a public record or government record.

Courtesy Copy

A public agency shall not be considered to be in possession of a public record that is created, maintained, or received by another public agency and made available to the public agency either by remote access to a computer network or by distribution as a courtesy copy, unless the agency that created, maintained, or received the record resides within the judicial branch of the State Government. A records custodian of a public agency that receives a request for a record created, maintained, or received by another public agency shall not be obligated to provide the record to the requestor. In the event the custodian does not provide the record, the custodian shall direct the requestor within seven business days to the public agency that, to the best of their knowledge, created, maintains, or received the requested record, at which time the request shall be considered completed. N.J.S.A. 47:1A-5.

Body Worn Camera Recordings

Additionally, while body worn camera (hereinafter “BWC”) footage does not qualify as a “criminal investigatory record” and is exempt from disclosure under OPRA (see North Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 565 (2017)), there are certain statutory exceptions that render the requested records exempt from disclosure. See N.J.S.A. 40A:14-118.5(l)(3), *et seq.* Specifically, N.J.S.A. 40A:14-118.5 (the “Body Worn Camera Law” hereinafter “BWCL”) provides, in pertinent part:

[n]otwithstanding that a criminal investigatory record does not constitute a government record under section 1 of P.L.1995, c. 23 (C.47:1A-1.1) [OPRA], only the following body worn camera recordings shall be exempt from public inspection: body worn camera recordings subject to a minimum three-year retention period solely and exclusively pursuant to subparagraph (a), (b), (c), or (d) of paragraph (2) of subsection j. of this section.

N.J.S.A. 40A:14-118.5(l)(3).

A BWC video recording having evidentiary or exculpatory value must be retained for a minimum of three years. N.J.S.A. 40A:14-118.5j(2)(a) and (c).

The analysis of case law concerning the interaction between OPRA and the BWCL exemptions and disclosure is limited. The Appellate Division in Fuster v. Twp. of Chatham, 477 N.J. Super. 477 (App. Div. 2023), rev'd on other grounds, 259 N.J. 533 (2025) held that, "the exemptions listed in N.J.S.A. 40A:14-118.5(l) are in addition to OPRA's exemptions." Id. at 491. See also Borough of Spotswood, et al. v. Middlesex County Prosecutor's Office, MID-L-000563-24 (Law. Div. 2024) (The Spotswood Court recognized the BWCL's evidentiary exemption pursuant to N.J.S.A. 40A:14-118.5j(2)(a) and N.J.S.A. 40A:14-118.5j(2)(c)).

As stated above, the HCPO is an agency that prosecutes criminal matters in the New Jersey Superior Court and would maintain evidence obtained from various municipalities as a part of a prosecutorial file. Any BWC recordings received would be maintained as evidence related to a criminal prosecution. Those BWC recordings would be subject to the three-year retention required under N.J.S.A. 40A:14-118.5j(2)(a) or (c) because the subject recordings would have evidentiary value. Accordingly, pursuant to N.J.S.A. 40A:14-118.5(l), the requested records would be exempt from disclosure as such records would be under the minimum three-years retention period. See Fuster, 477 N.J. Super at 491.

Common Law Analysis

"To constitute a common law public record, an item must 'be a written memorial ... made by a public officer, and... the officer [must] be authorized by law to make it.'" Rivera v. Union Cnty. Prosecutor's Off., 250 N.J. 124, 143, 270 A.3d 362 (2022) (alteration and omissions in original) (quoting Nero v. Hyland, 76 N.J. 213, 222, 386 A.2d 846 (1978)). A public record under the common law "is one that is made by a public official in the exercise of [the official's] public function, either because the record was required or directed by law to be made or kept, or because it was filed in a public office." Keddie, 148 N.J. at 49, 689 A.2d 702.

Under the Common Law, a requestor must satisfy three requirements to assert the right to access public records: (1) the records must be common-law public documents; (2) the person seeking access must "establish an interest in the subject matter of the material," South Jersey Publishing Co. v. New Jersey Expressway Auth., 124 N.J. 478, 487, (1991); and (3) the citizen's right to

access “must be balanced against the State’s interest in preventing disclosure.” Keddie v. Rutgers, State University, 148 N.J. 36 at 50(1997). Because the common-law right of access to public records is not absolute, one seeking access to such records must “establish that the balance of its interest in disclosure against the public interest in maintaining confidentiality weighs in favor of disclosure.” Home News v. State Dep’t of Health, 144 N.J. 446 at 454 (1996). See also, Keddie, supra, at 50. Although the Court has found that OPRA does not permit access to internal affairs reports, they should be disclosed under the CL when interests that favor disclosure outweigh concerns for confidentiality. Rivera v. Union Cnty. Prosecutor’s Off., 250 N.J. 124, 135, (2022). As such, the HCPO would have taken notice that the above requested reports would be considered public records.

Since your written request was submitted anonymously and you chose not to identify yourself, HCPO is unable to further assess your interest rights in obtaining the requested documents beyond that of the general public.

Response

HCPO is unable to provide documents as listed below.

1. Police arrest report authored by Sgt. Ruben Rodriguez on August 8, 2024 in which he arrested and charged an individual with aggrieved assault. Response is “that there is no record.”
2. Police report authored by Officer Sebastian Montes in relation to the arrest incident that occurred with SGT Ruben Rodriguez on August 8, 2024. Response is “that there is no record.”
3. Full Body camera footage of the incident as well. August 8, 2024 showing SGT Ruben Rodriguez making the arrest of the individual. Response is “that there is no record.”
4. Any and all internal affairs reports relating to the same incident on August 8, 2024. because there are no responsive records in HCPO’s possession since the HCPO did not conducted an Internal Affairs Investigation.

Any request for police reports prepared by Union City Police Department may be requested through the City of Union City (<https://www.ucnj.com/Departments/city-clerk>). Please be aware that the Custodian of those records may assert any exception, exemption or privilege under the law.

The Hudson County Prosecutor’s Office reserves the right to raise any other grounds in support of this response. The failure of the Hudson County Prosecutor’s Office to assert any exception, exemption or privilege does not act as a waiver of any ground for denial.

As with any OPRA request, you have the right to challenge the HCPO’s determination. At your option, you may either file a complaint in writing with the Government Records Council (GRC), located in the Department of Community Affairs, or institute a proceeding in the Superior Court. However, with any Common Law request, you have the right to challenge the HCPO’s determination by instituting a proceeding in the Superior Court.

Good Citizen via OPRAMachine OPRA/CL Request for Arrest Report, Police Report, BWC, and IA Reports on Sgt. Rodriguez 2024

Please contact us via email or call me at (201) 795-6400 x6502 if you have any questions regarding this request.

Very truly yours,

ESTHER SUAREZ
Prosecutor of Hudson County

By: *s/Keith M. Bendul*
KEITH M. BENDUL
Legal Analyst Civil Litigation Unit

KB/
Enclosures
c. Office of the Hudson County Counsel