



DIRECT DIAL NUMBER:
732-530-8822

John M. Glynn, Jr.
jglynn@dilworthlaw.com

November 20, 2023

Via Email – opra+request-55116-1ecfe26a@requests.opramachine.com

Re: OPRA Request Received November 8, 2023 Regarding Events on September 29, 2023

Dear Madame/Sir:

I am writing on behalf of my client, the Monmouth County Sheriff's Office (the "County"), in response to the records request that you submitted to the County under the Open Public Records Act (the "OPRA") and the Common Law right of access on November 8, 2023. The County received your request on the same day and subsequently forwarded the request to our office as special counsel for OPRA matters. This response is being provided within the period of time as required by law (the observation of Veterans' Day resulted in November 20th being the seventh business day after receipt of the request).

For reference, your request on November 8th was as follows:

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: ANY and ALL Spillman Direct Messages between the hours/ date of 17:20:45 on 09/29/23 and 18:09:55 on 09/29/23 between ANY and ALL sworn Freehold Township Police Department Officers and Monmouth County Sheriff's Office Telecommunicators.

Yours faithfully,

Anonymous

Your request under the OPRA is denied as it fails to properly identify the messages sought. The New Jersey Appellate Division has previously held that "[w]hile OPRA provides an alternative means of access to government documents not otherwise exempted from its reach, **it is not intended as a research tool litigants may use to force government officials to identify and siphon useful information. Rather, OPRA simply operates to make identifiable government records 'readily accessible for inspection, copying, or examination.'**" N.J.S.A. 47:1A-1."

(Emphasis added.) See MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005). The Appellate Division further held that “[u]nder OPRA, agencies are required to disclose only ‘identifiable’ government records not otherwise exempt ... In short, OPRA does not countenance open-ended searches of an agency’s files.” (Emphasis added.) *Id.* at 549.

Subsequently, the Government Records Council, the state agency responsible for interpretation and resolution of OPRA matters, interpreted the MAG decision to indicate an OPRA request seeking messages, communications, or other correspondence must provide “1) [the] content and/or subject of the [correspondence]; 2) the specific date or range of dates during which the [correspondence] was transmitted ... ; and 3) [the] identity [of] the sender and/or recipient of said [correspondence].” See Elcavage v. West Milford Township, GRC Complaint No. 2009-07 (April 2010). The Appellate Division has weighed in further regarding OPRA requests, holding that, “In order to limit a blanket [OPRA] request, the subject matter of the type of document sought should be identified in the request. See Serringer v. Office of Governor of State, A-0837-15T2, 2017 WL 2610646 (App. Div. June 16, 2017).

As applied to your request, the request is denied because it fails to identify the content and/or subject of the messages as well as the identity and/or recipient of the messages. In the past, the County has received similar requests for Spillman messages and has provided records in response. Past requests for which the County produced records provided details indicating the subject matter of the request, such as a case number. While the County redacts items not related to the requested case information as outside the scope of the request, we have provided Spillman messages in the past that provide more detail regarding the subject of the request. Conversely, your request does not provide any indication regarding the content or subject of the correspondence you wish to receive, nor the identity of the individual sender/recipient. Therefore, your request for records under OPRA is denied.

In addition, your request for records under the common law is denied. To gain access to common law public records, the requestor must make a greater showing than the Open Public Records Act (OPRA) requires. See N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 229 N.J. 541, 578 (2017). Under the common law, (1) the person seeking access to records must establish an interest in the subject matter of the material; and (2) the citizen's right to access must be balanced against the State's interest in preventing disclosure. *Id.* When this standard is applied to your request, your request does not indicate any interest you may have in the records. In view of the absence of a stated interest in the records, your request for records under the common law is denied.

If you believe that your request for access to a government record has been improperly denied, you have a right to challenge the decision 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 a 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 website at www.state.nj.us/grc. The GRC can also answer

November 20, 2023

Page 3

other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.

Very truly yours,
Dilworth Paxson LLP

By: /s/ John M. Glynn
John M. Glynn

Enclosure

cc: Michael Fitzgerald, Monmouth County Counsel (via email; w/o enclosure)
Cynthia Scott, Public Information Officer, Monmouth County Sheriff's Office (via email;
w/o enclosure)
Ginger Gero, Office of Monmouth County Counsel (via email; w/o enclosure)