

BRADLEY D. BILLHIMER
Ocean County Prosecutor

ANTHONY U. CARRINGTON
Chief of Detectives



MICHAEL T. NOLAN, JR.
First Assistant Prosecutor

ROBERT J. ARMSTRONG
Deputy First Assistant Prosecutor

OFFICE OF THE PROSECUTOR
119 Hooper Avenue
P.O. Box 2191
Toms River, New Jersey 08754-2191
732-929-2027
www.OCPONJ.gov

February 20, 2024

Mr. Richard Hone
<opra+request-57163-102193b6@requests.opramachine.com>

Re: Open Public Records Act (OPRA) request - Emails

Dear Mr. Hone:

This Office is in receipt of your OPRA request dated January 24, 2024 wherein you request the following:

"1. All emails to and from Taylor Toscano from May 2021 through January 14, 2024 including: TO, FROM, SUBJECT, TIME, DATE, ATTACHMENTS, and ALL COPIED INDIVIDUALS as they relate to defendant RICHARD HONE."

Please be advised that responding to your request will require this Office to review 257 emails and numerous attachments to the emails. The process of reviewing these items to determine what items are subject to disclosure versus those to be redacted will require time-consuming review and legal analysis. This process is

sufficiently extraordinary to warrant imposition of a special service charge pursuant to N.J.S.A. 47:1A-5c. Before undertaking to provide you with the emails to which you are entitled, we need clarification from you as to whether you are willing to pay the service charge.

We would anticipate that various portions of the emails would need to be redacted. It is for you to determine whether the unredacted portion would be of sufficient interest to you to justify paying a service charge for it.

As we must be, this Office is willing to grant your OPRA and common law requests and disclose to you that information to which you are entitled under the law. Determining what must be disclosed versus redacted would require attorney review for exceptions under OPRA and evaluation under the common law right of access.

N.J.S.A. 47:1A-5c authorizes a "public agency to impose a 'special service charge' if a response to a request for production of government records will involve an 'extraordinary expenditure of time and effort,'" so long as the charge is "reasonable" and based on the "actual direct cost" of accommodating the request. Fisher v. Division of Law, 400 N.J. Super. 61, 65, 69 (App. Div. 2008) (quoting N.J.S.A. 47:1A-5c).

It is conservatively estimated that satisfaction of your public record request will take approximately 8 hours. This far exceeds the amount of time required to respond to a typical OPRA

request. Based upon the fact that the emails in question consist of 257 items, together with numerous attachments, we maintain that the effort necessary to accommodate your OPRA request is "substantial," "extensive" and "extraordinary" enough to justify the charging of a service fee.

A special service charge must be "reasonable" and "based upon the actual direct cost of providing" the record. N.J.S.A. 47:1A-5c & d. I cannot tell you exactly how much the service charge will be until the time to satisfy your public record request is actually expended. If it takes 8 hours, the fee would be \$299.42. See Fisher, 400 N.J. Super. at 61.

We would like to make the position of this Office clear. Our position is not that, every time there is a public record request for emails there will be a special service charge assessed. We also are not imposing a special service charge because overtime would be required to meet the 7-day OPRA deadline in this case. The service charge would be imposed here in light of the fact that it involves a request for a voluminous amount of records requiring multiple redactions; therefore, the time to review and redact these records is obvious and very reasonably anticipated.

Please advise the undersigned as to whether you would like us to move forward with the redaction process, or whether you would like to withdraw your public record request for the emails. We also remain receptive to reaching a reasonable solution with you

regarding these records that accommodates both of our interests.

N.J.S.A. 47:1A-5g.

Should you disagree with our decision, please contact us in writing with your concerns so that we may consider them. If I can be of further assistance, please do not hesitate to contact me.

Yours very truly,

Dina R. Khajezadeh

Dina R. Khajezadeh
Assistant Prosecutor

DRK/dk