

Office of the Hunterdon County Prosecutor

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December 12, 2024

VIA EMAIL

Yourstruly

opra+request-69517-fc919a7d@requests.opramachine.com

RE: Open Public Records Act (OPRA) Request

Dear Yourstruly:

The Hunterdon County Prosecutor's Office (HCPO) is in receipt of your December 2, 2024 OPRA request, in which you request, in relevant part: "Crisis negotiation course certificate for officers B. Winfield, B. Hanley and T. Drew[.]"

Please be advised that HCPO has no responsive records regarding your request for the crisis negotiation course certificates for Officers B. Winfield and T. Drew. However, as it relates to the crisis negotiation course certificate for Officer B. Hanley, HCPO respectfully denies your request.

N.J.S.A. 47:1A-10 provides:

Notwithstanding the provisions of P.L. 1963, c. 73 (C. 47:1A-1 et seq.) or any other law to the contrary, the personnel or pension records of any individual in the possession of a public agency, including but not limited to records relating to any grievance filed by or against an individual, shall not be considered a government record and shall not be made available for public access, except that:

an individual's name, title, position, salary, payroll record, length of service, date of separation and the reason therefor, and the amount and type of any pension received shall be a government record;

personnel or pension records of any individual shall be accessible when required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the United States, or when authorized by an individual in interest; and

data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information, shall be a government record.

In Kovalcik v. Somerset County Prosecutor's Office, 206 N.J. 581, 598, (2011), the New Jersey Supreme Court emphasized that the right of access to government records under OPRA is not absolute. To be sure, OPRA "excludes twenty-one categories of information from the definition of a 'government record.'" Scheeler v. Office of the Governor, 448 N.J. Super. 333, 343 (App. Div. 2017) (citing N.J.S.A. 47:1A-1.1). N.J.S.A. 47:1A-10, for example, and as expressly noted above, exempts employee personnel and pension records from "government records" that must otherwise be provided under OPRA. Accordingly, under the statute "personnel records are, by definition, not classified as government records at all." Kovalcik, 206 N.J. at 592. The statutory language of N.J.S.A. 47:1A-10, "however, also makes it clear that if, and only if, a document otherwise classified as a personnel record fits within one of the three exceptions to the general exemption for personnel records, it becomes subject to disclosure." Ibid.

The Court in Kovalcik squarely addressed the third exception in N.J.S.A. 47:1A-10, which likewise applies to your records request here. That "exception does not authorize disclosure of any and all documents that evidence an employee's educational background or even that evidence an employee's participation in educational pursuits generally." Id. at 593 (citing N.J.S.A. 47:1A-10). Rather, "only if there is a specific, or particular, educational qualification that is a prerequisite for the job and only if the record demonstrates compliance with that specific requirement is it subject to being disclosed pursuant to OPRA." Ibid.

With that background in mind, HCPO submits that the records you request are exempt from disclosure and do not fall within one of the statutory exceptions to the exemption in N.J.S.A. 47:1A-10. In other words, the records you request are only subject to the third exception in N.J.S.A. 47:1A-10 if they reveal that the officer(s) had completed specific training or education that was required for their employment as investigators with HCPO. On the other hand, if the officers voluntarily attended courses other than those that were required of them, the records disclosing that information remain within the broad purview of the exemption and, therefore, are not subject to disclosure. Those circumstances apply here.

HCPO asks that you refine your OPRA requests consistent with the authority articulated above. Please be further advised that HCPO may reconsider your request for records upon receipt of a lawfully-issued subpoena, pursuant to Rule 4:14-7, or any other legal request.

HCPO has confined its response to your request to that concerning OPRA — not the common law right of access. Regardless, access under the common law involves balancing several factors, including a requestor's interest in obtaining the related record(s) against the State's interest in nondisclosure, see Loigman v. Kimmelman, 102 N.J. 98, 103 (1986), which cannot be accomplished here due to a lack of information.

Your OPRA request has been processed in accordance with N.J.S.A. 47:1A-1 et seq. If your request has been denied in whole or in part, HCPO reserves the right to raise any other grounds for denial not raised in this response. The failure of HCPO to assert an exception or privilege herein does not act as a waiver of any ground for denial not raised herein.

Thank you for your attention to this response. Should you have any questions or concerns, please do not hesitate to contact me.

Respectfully submitted,

RENÉE M. ROBESON
Hunterdon County Prosecutor

A handwritten signature in black ink, appearing to read 'J. Paravecchia', with a stylized, cursive script.

By: JOSEPH PARAVECCHIA
First Assistant Prosecutor