

Please accept this e-mail/fax as my request for government records in accordance with the Open Public Records Act (OPRA) and the common law right of access. Please respond and send all responsive documents to me via e-mail at paff@pobox.com. If e-mail is not possible, please fax responses and responsive records to me at 908-325-0129. Also, I would appreciate it if you would acknowledge your receipt of this e-mail.

OPRA to Warren County Prosecutor

The December 27, 2012 Express Times reported that multiple unnamed "Warren County jail officers used county-owned generators for personal use in the aftermath of Superstorm Sandy." Sheriff Gallant is quoted as saying the officers are "being disciplined" and that "no one was fired." Gallant declined, however, to state the number of officers involved, the number of generators involved, or the names of any of the officers involved.

The article mentions that "Prosecutor Richard Burke concluded earlier this month that no criminal activity took place." This suggests that your office opened up a file on the matter and apparently closed it after electing to not seek criminal charges against those involved.

Yet, if your office has a file, I'd like to see it. If you assert that I am not able to see some records in the file, I wish to see the remaining records in the file, plus get a document-by-document description of the record that you entirely suppress along with a written justification for their suppression. For any remaining documents that you believe I am only entitled to see part of, I wish to see narrowly redacted versions of those documents, together with a redaction-by-redaction index explaining and justifying each redaction.

Note, specifically, that, in addition to OPRA, I am seeking these records under the common law right of access which N.J.S.A. 47:1A-8 states is in full force in New Jersey for all types of records "including criminal investigatory records of a law enforcement agency." Thus, conclusory, generalized claims of privilege won't prevail. I need to be given enough information about the nature of the redacted/suppress matter to allow me to judge for myself the reasonableness of the redaction/suppression.

As for my common law interest, I am a citizen who is keenly interested in openness and transparency in all parts of New Jersey. I serve as the Chairman of the New Jersey Libertarian Party's Open Government Advocacy Project and have worked to unearth and publish covered-up information in all corners of this state. I believe that these officers, who are apparently guilty of violating the public trust, ought to be publicly identified. If I learn these officers' names, I will post them on all available Internet blogs and call media and public attention to the posting. Also, I think that having the facts and the officers' names (and, in turn their possible relationships to other government officials) will help citizens determine whether the prosecutor's election to not follow through on this matter was a reasonable exercise of that discretion.

Records requested:

All documents contained within any file that was made or maintained by your office regarding these officers' use of these generators.

Other than the documents within the file responsive to the above request, all other documents that pertain to the above described incident.

OFFICE OF THE PROSECUTOR
413 Second Street
Belvidere New Jersey 07823
Phone: (908) 475-6275
Fax: (908) 475-6286



RICHARD T. BURKE
County Prosecutor
MICHAEL J. MCDONALD
First Assistant Prosecutor
WILLIAM R. EPELL
Chief of Detectives

County of Warren

January 4, 2013

John Paff, Chairman
Open Government Advocacy Project
Via telefax 908-325-0129

RE: GR#2013-001 Warren County Jail Employee's Personal Use of County Generator

Dear Mr. Paff:

This will acknowledge receipt of your request for copies of records in connection with the above referenced matter on January 3, 2013. After review, the majority of the records in our file are confidential as criminal investigatory records and not subject to disclosure under the Open Public Records Act (N.J.S.A. 47:1A-1 et. seq.) There are also some Internal Affairs documents in the file which are not subject to disclosure. The exempt documents in the file are described in the attached list which also specifically identifies the reason for denial.

I am, however, providing two redacted documents in response to your request: (1) WCPO Investigation Closeout Review dated 12/7/12 by Lt. Serafin and approved by AP Donald Cox and Prosecutor Burke indicating that investigation is closed and matter is being referred back to the Sheriff's Department for continuation of Internal Affairs Investigation containing one page with the name of the target redacted and (2) Correspondence dated 12/21/12 from Prosecutor Burke to Sheriff Gallant formally advising him that the criminal investigation is completed and the matter is being returned to the Sheriff for administrative action containing one page with the name of the target redacted.

In further explanation of the response to your request, I can provide the following information: The Warren County Prosecutor's Office was contacted on November 14, 2012 by the Warren County Sheriff's Office concerning an Internal Affairs investigation that they had begun on an employee at the Warren County Correctional Center for the use of a county owned generator for personal use. On November 15, 2012, the Prosecutor's Office directed that the administrative Internal Affairs Investigation be held in abeyance pending a criminal investigation by the Warren County Prosecutor's Office.

On November 19, 2012, Lt. Serafin of the Warren County Prosecutor's Office Major Crimes Unit was assigned to conduct the Criminal Investigation and the matter was assigned Investigation Case Number IN12-096. Between November 19, 2012 and December 7, 2012, Lt. Serafin conducted an investigation, interviewed witnesses and the target, prepared a written report and reviewed transcribed statements. On December 7, 2012, Lt. Serafin recommended to Assistant Prosecutor Donald Cox that the investigation be closed and returned to the Sheriff's Department. AP Cox concurred in closure as did Prosecutor Burke.

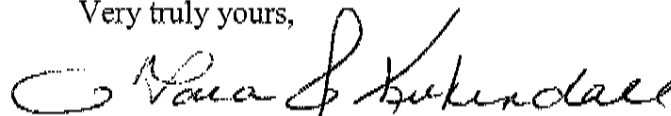
On December 21, 2012, the matter was returned to the Warren County Sheriff's Office for any administrative action deemed appropriate.

As you are aware, under the common law, the right to examine documents rests upon a showing of some personal or particular interest in the material sought, balanced against the public's interest in the confidentiality of the material. You indicate that you are a "citizen keenly interested in openness and transparency in all parts of New Jersey" and you believe that the individuals involved should be "publicly identified". As no criminal charges were filed and the matter was handled as an internal affairs/personnel matter, the public's interest in the confidentiality of the material is not outweighed by your generalized interest in the documents under the common law.

Generally, there is a charge of \$.05 per page for copies. However, we do not charge a fee unless the fee is at least \$5.00 (100 pages). As your request generated only 2 pages, there will be no charge at this time. However, if there is a request in the future, there may be a fee for these pages as well as any additional pages if the total number of pages is 100 or more.

If you should have any questions concerning this matter please feel free to contact me at 908-689-9119.

Very truly yours,



TARA J. KIRKENDALL
Assistant Prosecutor

cc: Sheriff David Gallant

List of Unreleased Documents in IN12-096

1. Warren County Prosecutor's Office Investigation Report prepared by Lt. John Serafin concerning criminal investigation IN#12-096 dated 11/29/12 and approved by Deputy Chief Kirk Trauger containing five pages discussing actions taken by Lt. Serafin to investigate the referral including the interview of six individuals including the target of the investigation. Denied as a criminal investigatory record.
2. Transcribed Statement of Witness #1 taken by Lt. Serafin on November 20, 2012 containing 14 pages. Denied as a criminal investigatory record.
3. Second Transcribed Statement of Witness #1 taken by Lt. Serafin on November 20, 2012 containing five pages. Denied as a criminal investigatory record.
4. Transcribed Statement of Witness #2 taken by Lt. Serafin on November 20, 2012 containing 12 pages. Denied as a criminal investigatory record.
5. Signed Miranda Card of Target dated November 20, 2012 and witnessed by Lt. Serafin containing one page. Denied as criminal investigatory record.
6. Transcribed Statement of Target taken by Lt. Serafin on November 20, 2012 containing 19 pages. Denied as criminal investigatory record.
7. Transcribed Statement of Witness #3 taken by Lt. Serafin on November 26, 2012 containing 8 pages. Denied as a criminal investigatory record.
8. WCPO Evidence and Property Form detailing disposition of recorded statements dated November 27, 2012 containing one page. Denied as a criminal investigatory record.
9. Written Statement of Witness #1 provided to Lt. Serafin on November 26, 2012 containing one page. Denied as a criminal investigatory record.
10. Undated/Unsigned Memo from Undersheriff McCarthy to Sheriff Gallant regarding Internal Affairs Investigation No. 2012-21 regarding an investigation of a jail employee outlining the status of the IA investigation up to the point where the investigation was turned over to the WCPO for investigation containing three pages. Denied as Internal Affairs document and/or criminal investigatory record as it contained potentially inculpatory information.
11. Internal Affairs Complaint Notification Form concerning IA Investigation Case No. 2012-21 signed by target of the investigation on 11/13/12 and witnessed by Undersheriff McCarthy containing one page. Denied as Internal Affairs document.
12. Handwritten Notes of Lt. Serafin containing information obtained from interviews of witnesses and target of the investigation consisting of four pages. Denied as criminal investigatory record and/or fall outside definition of government record.
13. Anonymous letter received by the WCPO on 12/17/12 concerning investigation. Denied as falling outside the definition of Public Record—this is not a record required to be made or maintained by a public agency and was received after the investigation was closed.

WARREN COUNTY PROSECUTOR'S OFFICE

MAJOR CRIME UNIT

Investigation Closeout Review

File No. IN12-096 Victim County of Warren
 Suspect [REDACTED] Nature of Case Offical Misconduct
 Date Opened 11/20/12 Detective Serafin

Closeout of file recommended for following reasons:

- _____ Complaint/Indictment resulted; contents transferred to Prosecution file # _____
- _____ Unattended death, natural causes apparent
- _____ Motor vehicle accident with injuries, no recklessness
- _____ Fatal motor vehicle accident, no recklessness
- _____ Fire determined to be accidental
- X _____ Other:

Comments: Results of investigation turned over to Warren County Sheriff for disposition.

Detective John Serafin Date: 12/7/12

Review recommendation:

Sup. Det:

Initials	Comments	Date
<u>DFC</u>	<u>CLOSE PER PROSECUTOR AFTER LIES & DISCUSSIONS WITH AG & SHERIFF</u>	<u>12/7/12</u>

Initials	Comments	Date
<u>PA</u>		<u>12-9-12</u>

File Closed: Initials SV Date: 1/3/13

CCH's Removed: Initials SV Date: 1/3/13

OFFICE OF THE PROSECUTOR
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RICHARD T. BURKE
County Prosecutor
MICHAEL J. MCDONALD
First Assistant Prosecutor
WILLIAM R. EPELL
Chief of Detectives

County of Warren

December 21, 2012

Sheriff David Gallant
Warren County Sheriff's Office
413 Second St.
Belvidere, NJ 07823

Re: [REDACTED]

Dear Sheriff Gallant:

As you know, we have recently conducted an investigation of the above individual involving improper use of a county owned generator shortly after Hurricane Sandy occurred. Our investigation examined the conduct of [REDACTED] including interviews of all relevant individuals.

After our review, it appears there is insufficient evidence to continue our investigation at this time. Therefore, based on the information in our possession, I hereby return the matter to your department for any administrative action you deem appropriate.

Thank you for your courtesies.

Very truly yours,

RICHARD T. BURKE
Prosecutor

RTB:tjc

CC: First Assistant Prosecutor Michael J. McDonald
Chief William Eppell
AAG Dermot P. O'Grady