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Ocean County Prosecutor



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December 8, 2014

Via Email and Regular Mail

Mr. John Paff
P.O. Box 5424
Somerset, New Jersey 08875

RE: OPRA REQUEST
November 28, 2014

Dear Mr. Paff:

I am in receipt of your emailed correspondence dated November 28, 2014. You have requested that I provide you with a description of the documents that are in possession of the Ocean County Prosecutor's Office pertaining to Mr. Gibson.

Your "Records Requested" are listed verbatim below with my responses:

1. Audio and/or video recordings of custodian interrogations of John Gibson.

RESPONSE: An Ocean County Prosecutor's Office Detective interviewed John Gibson at the Little Egg Harbor Police Department on January 27, 2014, regarding Mr. Gibson's involvement with a minor. This interview was video-recorded in a DVD format.

This material is exempt for the following reasons.

Under N.J.S.A. 47:1A-1 et seq., it is a criminal investigatory record and therefore, exempt from public disclosure.

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Additionally, the Open Public Records Act (OPRA), under N.J.S.A. 47:1A-9 provides, in relevant part, the following sections, which authorize a custodian of records to deny release of certain records:

a. The provisions of this act, P.L.2001, c. 404 (C.47:1A-5 et al.), shall not abrogate any exemption of a public record or government record from public access heretofore made pursuant to P.L.1963, c. 73 (C.47:1A-1 et seq.); 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; or federal order.

b. The provisions of this act, P.L.2001, c. 404 (C.47:1A-5 et al.), shall not abrogate or erode any 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.

One such statute encompassed under the provisions of N.J.S.A. 47:1A-9(a) and (b) is N.J.S.A. 2A:82-46. This statute mandates the confidentiality of all records related to child victims of sexual assault or abuse. In fact, under subpart (c), a requesting party is required to make formal application with the court for disclosure of such records:

The information described in this act shall remain confidential and unavailable to the public unless the court, after a hearing, determines that good cause exists for disclosure. The hearing shall be held after notice has been made to the victim, parents of victim, spouse, or other person legally responsible for the maintenance and care of the victim, and to the person charged with the commission of the offense, counsel or guardian of that person.

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In addition to the exclusions and exceptions found throughout the Act, the first section of OPRA sets forth the public policy of the statute stating "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy." N.J.S.A. 47:1A-1. (Emphasis added). (See also Burnett v. County of Bergen, 198 N.J. 408, 422-423 stating this portion of OPRA is a substantive part of the statute, not a preface or preamble.)

The legislature determined any "report, statement, photograph, court document, indictment, complaint, or any other public record" relating to child victims of "aggravated sexual assault, sexual assault, criminal sexual contact, criminal sexual contact, endangering the welfare of children under N.J.S.A. 2C:24-4, or in any action alleging an abused or neglected child under P.L. 1974, c 119" shall be "confidential and unavailable to the public." N.J.S.A. 2A:82-46. As such, records of "Audio and/or video recordings" and any other records "pertaining" to those victims are treated as exempt from OPRA.

2. Any CDR or other forms of complaint that have issued as a result of this investigation.

RESPONSE: No such documents exist as no criminal charges and no criminal complaints of any kind have been issued against John Gibson.

3. All police incident report and/or investigatory complaints regarding this incident.

RESPONSE: An Ocean County Prosecutor's Office Detective prepared an Investigation Report, dated June 6, 2014, regarding his investigation into the allegation made against John Gibson.

This document is also exempt from public disclosure for all of the same reasons set forth in Paragraph One hereinabove. In addition, the New Jersey Government Records Council (GRC) held in Janeczko v. Division of Criminal Justice, GRC Complaint Nos. 2002-79 and 2002-80, that the exemption for criminal investigatory records applies to all investigations, "resolved and unresolved."

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The GRC further noted that the exemption for criminal records applies "without reference to the status of the investigation."

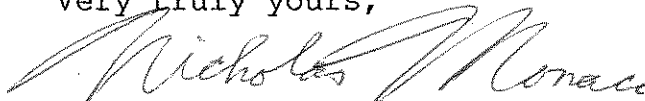
4. All records in the OCPO's investigatory files regarding the Gibson incident.

RESPONSE: This request fails to identify with reasonable clarity the specific government records sought, as is required by Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005). At this time, we request clarification of your OPRA request. Please respond in writing and identify the specific government records sought so that we may process your request. Failure to provide written clarification of your request will result in the closure of this OPRA request.

In the event that you disagree with this office's determination in this matter, you may appeal these responses to the New Jersey Government Records Council or the New Jersey Superior Court as provided by N.J.S.A. 47:1A-6 and 7.

If you should be interested in discussing your requests with me in greater detail, please do not hesitate to contact me.

Very truly yours,



O. NICHOLAS MONACO, ESQ.

Assistant Prosecutor

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