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CIVIL DIVISION  
MIDDLESEX COUNTY

WILLIAM J. BRENNAN,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION: MIDDLESEX COUNTY
PLAINTIFF,	:	
	:	
v.	:	DOCKET NO.: MID-L-293-15
	:	
MIDDLESEX COUNTY PROSECUTOR'S	:	
OFFICE; JAMES O'NEILL, CUSTODIAN	:	
OF RECORDS FOR THE MIDDLESEX	:	CIVIL ACTION
COUNTY PROSECUTOR'S OFFICE; AND	:	
JOHN DOES 1-10, BEING AGENTS,	:	
SERVANTS, AND EMPLOYEES OF	:	
EACH AS A CONTINUING INVESTIGATION	:	
MAY REVEAL (WHO ARE FICTITIOUSLY	:	CERTIFICATION OF
NAMED BECAUSE THEIR TRUE	:	THOMAS K. MANNION
IDENTITIES ARE UNKNOWN),	:	
	:	
DEFENDANTS.	:	

I, Thomas K. Mannion, of full age, hereby certify as follows:

1. I am fully familiar with this matter.
2. I am in receipt of Your Honor's Order dated April 7, 2015, which was received by this office on April 9, 2015 at 10:15 a.m.
3. As Your Honor is aware, this office is in possession of a print-out from the Judiciary Telecommunications Network, Administrative Office of the Courts Information Technology Office, commonly referred to as Promis Gavel which lists 119 cases charging a violation of N.J.S.A. 2C:29-2b from 2004 to March 25, 2014.

4. As the court is aware, Promis Gavel is an automated criminal case tracking system that captures base information concerning defendants. The system is a searchable database in which only certain information is available to the public at public access terminals either on the internet or at Superior courthouse in each court in the State.
5. The Prosecutor's Office is permitted to use Promis Gavel for criminal prosecutions and investigations. It is my understanding that we are not permitted to use Promis Gavel to comply with a request for information from the public not related to a criminal prosecution or investigation.
6. Since the court's order requires us to provide the MVR's up to the date of the order, this office would be required to utilize Promis Gavel in an unauthorized manner, specifically by utilizing Promis Gavel to find additional violations of N.J.S.A. 2C:29-2b in the hopes of finding additional MVR's that comply with the Plaintiff's OPRA request from March 25, 2014 to April 7, 2015. We seek clarification of Your Honor's Order of April 7, 2015 as to whether the Order requires us to utilize Promis Gavel in an unauthorized manner.
7. If the court orders us to breach our obligations to the Administrative Office of the Courts and run an additional list from March 25, 2014 to April 7, 2015, the list can only be run overnight pursuant to system requirements and may require us to seek assistance from Administrative Office of the Courts Information Technology Office.
8. In addition, this office has not located, retrieved and copied the MVR's requested by the Plaintiff. I attach my letter of August 14, 2014 to the Honorable Arthur Bergman, J.S.C. in Middleton v. O'Neil, Docket No. MID-L-393-14, as Exhibit A. The only MVR's that were provided to Judge Bergman were 5 MVR's related to the Middleton pursuit. I provided Judge Bergman the list I referenced in Paragraph 3 for *in camera* review, which included more cases as it was run from 2003 to March 25, 2014. This

list is still under review by Judge Bergman and he has not ordered production of any of the other MVR's that it may contain.

9. If we are required to comply with Your Honor's Order, the State would need more than 3 days to produce the MVR's requested.
10. The Middlesex County Prosecutor's Office has files in its record room dating back to 2010. The remainder of the files requested by Plaintiff, dating back to 2004, are off-site in the Division of Archives, Records and Management Office located in North Brunswick.
11. The Middlesex County Prosecutor's Office has one person tasked on a daily basis to retrieve records from archives.
12. The Promis Gavel list provided *in camera* to Judge Bergman indicates that there are 92 files to locate in the archives.
13. The person tasked with locating files from archives typically retrieves less than 10 archived files a day. In addition to his other responsibilities, locating 92 files within 3 days would be impossible.
14. Once the files are retrieved, a staff member would have to be assigned to review all 119 files, not including the potential files that may be located with an additional unauthorized run of Promis Gavel to determine whether we are in possession of the MVR in the file itself or in our evidence vault.
15. Once all MVR's are physically located, a staff member would have to copy the DVD's or CD's containing the MVR's.
16. This office possesses only 3 machines capable of reproducing a DVD or CD.
17. An MVR takes no more than 10 minutes to reproduce.
18. Given all of these facts, to comply with the court's order within 3 days would disrupt the operation of the office.

19. We would respectfully request 30 days to comply with the court's order.

I certify that the foregoing statements made by me are true. I am aware that if any of these statements are willfully false, I am subject to the punishments provided by law.

  
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THOMAS K. MANNION  
ASSISTANT PROSECUTOR  
Attorney ID No. 036631989

DATED: April 16, 2015



## MIDDLESEX COUNTY PROSECUTOR'S OFFICE

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August 14, 2014

**Gerard P. McAleer**  
*Chief of County Investigators*

Hon. Arthur Bergman, J.S.C  
Courtroom 404  
Middlesex Family Courthouse  
~~120 New Street~~  
New Brunswick, NJ 08901

RE: STEVEN MIDDLETON V. JAMES E. O'NEIL, ET. AL.  
DOCKET NO. MID-L-393-14

Your Honor:

Please allow this letter to confirm that copies of DVDs containing the MVRs from New Brunswick police vehicles # 918, 920, 941, 906, and 923 have been delivered to Your Honor's chambers pursuant to Your Honor's verbal Order on March 20, 2014.

In response to the written Order regarding this matter, enclosed are copies of three unredacted documents from the Middleton pursuit file:

- I/A Complaint Notification & Review Form,
- letter by me to Director Caputo dated July 27, 2012, and
- letter from Director Caputo to me dated July 30, 2012.

With respect to these three documents, in the event that the Court decides to release them to plaintiff's counsel, we request that the name of the other officer be redacted from the documents.

Also enclosed is the Certification by Captain Penna and the attachments thereto.

Finally, enclosed is a copy of a seven page printout from Promis Gavel listing one hundred thirty seven Eluding cases arising out of New Brunswick from January 2003 to March 25, 2014.

" EXHIBIT A "

Following the hearing before Your Honor on March 20, 2014, I spoke with Captain Penna and we discussed the fact that we were certain that only one case involving a police pursuit, the Middleton case, was referred to our Professional Standards Unit since January 2003. The other pursuit case came to Captain Penna's attention since it involved the death of a civilian and was investigated by our Major Crimes Unit. During this conversation, it occurred to me that every police pursuit in which there was an arrest would result in a complaint charging the arrestee with Eluding in violation of N.J.S.A. 2C:29-2.b. Since these charges are crimes of either the second or third degree, these complaints would be transferred in Promis Gavel to our office and a Promis Gavel number generated. We do not open a physical file, in all cases since the complaints are initially reviewed by a Zone Assistant Prosecutor who would decide whether to downgrade the complaint to municipal court or to refer the complaint to the Vertical Prosecution Unit. The Vertical Prosecution would obtain discovery regarding the case, including the MVR, if one existed.

During our discussion, I recalled handling the prosecution of a police officer evidence custodian who was charged with stealing Controlled Dangerous Substances from the evidence vault of a local police department. One of my responsibilities in that case was to ascertain the effect of missing evidence on open and closed CDS cases arising from that municipality during the timeframe that that particular officer was the evidence custodian. Criminal Case Management assisted by providing me with a printout from the Promis Gavel system listing all cases from that municipality involving CDS charges from the relevant period.

I also recalled asking one of our support staff who works with Promis Gavel at a later date on an unrelated matter for a similar type of printout; that is a list of cases charging a particular statute from a particular municipality during a specific timeframe. I recall being told at that time that this office did not have the capability to run a report for a particular municipality; we could only run the report for the entire county. Additionally, a report for only one year could be run at a time and that report had to be run overnight.

Following my conversation with Captain Penna, I spoke with, I believe, the same support staff person to confirm my recollection. Apparently, I was not clear about my inquiry, the support staff person was somewhat overzealous, and, on March 24, 2014, ran a report for the Eluding statute for the entire county from January 2003 resulting in a 53 page printout listing one thousand fifteen cases. The staffer then contacted a Promis Gavel technician in Trenton and a second report was run on March 25, 2014, resulting in a seven page printout listing one hundred thirty seven Eluding cases arising out of New Brunswick from January 2003.

Since that time, I have come to believe that it is not an authorized use of the system by this office to do research or to provide printouts relating to civil discovery or OPRA requests. See Rashaun Barkley v. Essex County Prosecutor's Office Custodial Agency, GRC Complaint No. 2013-244. In that case, the GRC, after reviewing the judiciary's press release relating to the promis gavel computer system, specifically stated:

The promis gavel computer system is an automated criminal case tracking system that captures base information concerning defendants. The system is a searchable database in which only certain information is available to the

public at public access terminals either on the internet or at Superior courthouse in each Court in the State. Thus, on its face, a promiss gavel is not a record but a system by which basic information can be retrieved. To this end, the GRC is satisfied that these request items {promiss gavel} are invalid because they seek a system and not a record. [Emphasis Added]

Accord, Mikal McClain v. Essex County Prosecutor's Office, Custodian of Record, Complaint No. 2011-202.

Nevertheless, since we are in possession of the printout, a copy is attached for in camera review. Note that the printout lists the Promiss Gavel number ("CASE NO"), defendant's last and first name, complaint number, indictment number, or accusation number ("CDR OR IND/ACC NO"), and disposition. It does not list the New Brunswick police case number.

We await direction by the Court as to any further action required of this office regarding this list.

Respectfully,

*Thomas K. Mannion* / km  
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Chief, Special Prosecutions Unit  
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/km  
Enc.

Cc: Benjamin Leibowitz, Esq. (w/o enc.)  
Donald Burke, Esq. (w/o enc.)