

WALTER M. LUERS, ESQ. - 034041999
LAW OFFICES OF WALTER M. LUERS, LLC
Suite C202
23 West Main Street
Clinton, New Jersey 08809
Telephone: 908.894.5656
Attorney for Plaintiff

<p>JOHN P. SCHMIDT, Plaintiff, v. ANDREW C. CAREY in his official capacity as PROSECUTOR OF MIDDLESEX COUNTY, Defendant.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY DOCKET NO. _____ CIVIL ACTION VERIFIED COMPLAINT</p>
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Plaintiff John P. Schmidt, through its undersigned counsel Law Offices of Walter M. Luers, LLC, by way of verified complaint against the Defendant Andrew C. Carey in his official capacity as Prosecutor of Middlesex County, alleges as follows:

PRELIMINARY STATEMENT

This is an action alleging violations of the Open Public Records Act, *N.J.S.A. 47:1A-1, et seq.* (“OPRA”) and the common law right of access seeking a copy of the video (and audio, if any) from the December 4, 2013 fatal shooting of Dixon Rodriguez by the Perth Amboy Police.

THE PARTIES

1. Plaintiff John P. Schmidt is a citizen of the State of New Jersey and resides at 1 West Thompson Avenue, Gloucester City, New Jersey.
2. Defendant Andrew C. Carey is the Prosecutor of Middlesex County and, on information and belief, is a “custodian of a government record” as that term is defined by OPRA, N.J.S.A. 47:1A-1.1.

JURISDICTION AND VENUE

3. The Court has subject matter jurisdiction of this action pursuant to *N.J.S.A. 47:1A-6* and the common law.

4. Venue is proper in this court pursuant to *R. 4:3-2(a)(2)* because all of the relevant events occurred in Middlesex County, the Defendant, is located within this County.

FACTUAL ALLEGATIONS

5. In his Verified Complaint, Plaintiff's interactions with the agents of the Defendant will be attributed to the Defendant himself in his official capacity.

6. On April 14, 2015 Plaintiff submitted a written OPRA request to Defendant via email addressed to james.oneill@co.middlesex.nj.us. In that OPRA request, Plaintiff asked for a copy of the video (and audio, if any) from the December 4, 2013 fatal shooting of Dixon Rodriguez by the Perth Amboy Police.

7. According to a December 7, 2014 Star Ledger article, the Defendant stated "there is a security video that recorded the incident and confirms the officers' accounts of what happened".

8. On April 15, 2015, Defendants denied Plaintiff's OPRA request claiming "the videotape is part of a criminal investigatory record and is exempt from the public disclosure under *N.J.S.A. 47:1A-1.1*, et seq."

9. Plaintiff has a strong public interest and legitimate private interest in obtaining the requested documents.

10. Defendants' interest in non-disclosure does not outweigh Plaintiff's interest in disclosure.

COUNT I: VIOLATION OF OPRA

11. The Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs 1-10 of the Plaintiff's complaint as though fully set forth at length herein.

12. The Defendants have violated OPRA by not providing to Plaintiff a copy of the December 4, 2013 video.

COUNT II: VIOLATION OF THE COMMON LAW RIGHT OF ACCESS

13. Plaintiff repeats and incorporates by reference each and every allegation contained in paragraphs 1-12 of the Plaintiff's complaint as though fully set forth at length herein.

14. Plaintiff has a common law right of access to a copy of the video requested by him.

15. Plaintiff has a legitimate private interest and wholesome public interest in the requested records.

16. Defendant has no legitimate interest in maintaining the secrecy of this video. Therefore, the Defendant has violated Plaintiff's common law right of access.

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment against the Defendants:

- A. Ordering Defendants to disclose of a copy of the video (and audio, if any) from the December 4, 2013 fatal shooting of Dixon Rodriguez by the Perth Amboy Police;
- B. Awarding Plaintiff costs and reasonable attorneys' fees; and
- C. For such other or further relief as this Court deems just and equitable.

CERTIFICATION PURSUANT TO R. 4:5-1

I certify that the dispute about which I am suing is not the subject of any other action pending in any other court or a pending arbitration proceeding to the best of my knowledge and belief. Also, to the best of my knowledge and belief no other action or arbitration proceeding is contemplated. Further, other than the parties set forth in this complaint, I know of no other parties that should be made a part of this lawsuit. In addition, I recognize my continuing obligation to file and serve on all parties and the Court an amended certification if there is a change in the facts stated in this original certification.

CERTIFICATION PURSUANT TO R. 1:38-7(B)

I certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Walter M. Luers, Esq. is designated as trial counsel on behalf of Plaintiff.

Respectfully Submitted,

LAW OFFICES OF WALTER M. LUERS, LLC

By: 

DATED: June 1, 2015

Walter M. Luers, Member
Suite C202
23 West Main Street
Clinton, New Jersey 08809
Telephone: 908.894.5656

VERIFICATION

Walter M. Luers, of full age, certifies as follows:

1. I am counsel for the Plaintiff in the action captioned "*Schmidt v. Carey*".

All of the facts stated in the verified complaint to which this Verification is attached are true, and as to those facts that are alleged on information and belief, I believe those facts to be true.

2. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.



WALTER M. LUERS

Dated: June 1, 2015

Law Offices of
Walter M. Luers, LLC

Suite C202
23 West Main Street
Clinton, New Jersey 08809
Telephone: 908.894.5656
Facsimile: 908.894.5729
www.luerslaw.com

June 1, 2015

Walter M. Luers, Esq.*

*Also admitted in New York

Writer's Direct Email: wluers@luerslaw.com

Honorable Travis L. Francis, A.J.S.C
Superior Court of New Jersey
Middlesex County Courthouse
56 Patterson Street, 2nd Floor
New Brunswick, New Jersey 08903

Re: *Schmidt v. Carey*

Dear Judge Francis:

We are submitting this Letter Brief in lieu of a more formal brief in support of this action under the Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1, et seq., and the common law right of access, which has been opened to the Court via Verified Complaint and Order to Show Cause.

We filed this OPRA action because Plaintiffs, acting through their counsel, were denied access to a copy of the video (and audio, if any) from the December 4, 2013 fatal shooting of Dixon Rodriguez by the Perth Amboy Police

We discuss the facts of the case first. Then we discuss why this OPRA action should proceed in a summary manner. Then we discuss our legal arguments with respect to each category of records to which access was denied.

STATEMENT OF FACTS

For a recitation of the facts known to the Plaintiff, we respectfully refer the Court to the Verified Complaint and the Luers Certification that has Plaintiff's OPRA request and Defendant's response attached to it.

The decedent and his family have filed a civil suit against the police officers involved in the shooting, which is captioned *Rodriguez, et al. v. Fontan, et al.*, Docket No. MID-L-10962-14. Copies of these papers are being mailed to counsel for the plaintiffs in that matter in the event that they wish to become involved in this proceeding.

LEGAL ARGUMENT

POINT I

PLAINTIFF'S ACTION SHOULD PROCEED IN A SUMMARY MANNER

The standards governing the initiation of OPRA actions are familiar ones. "A person who is denied access to a government record by the custodian of the record, . . . may institute a proceeding to challenge the custodian's decision by filing an action in Superior Court." *N.J.S.A.* 47:1A-6. Once instituted, "[a]ny such proceeding shall proceed in a summary or expedited manner." *Id.* "This statutory language requires a trial court to proceed under the procedures prescribed in Rule 4:67." *Courier News v. Hunterdon County Prosecutor's Office*, 358 N.J. Super. 373, 378 (App. Div. 2003). Any such action must be initiated by Order to Show Cause, supported by a verified Complaint. *Id.* (citing *R. 4:67-2(a)*). Here, because OPRA authorizes actions under it to proceed in a summary manner, and Plaintiff's request for an order to show cause is supported by a verified complaint, the relevant documents have been provided via certification, and the relevant facts should not reasonably be disputed, the Order to Show Cause should be granted so this matter may proceed in a summary manner. *R. 4:67-2(a)*.

POINT II

THE VIDEO AND AUDIO SOUGHT BY PLAINTIFF SHOULD BE DISCLOSED TO PLAINTIFF

Plaintiff seeks a record pursuant to OPRA and the common law right of access. As the Court knows, the Open Public Records Act (“OPRA”) mandates that “government records shall be readily accessible for inspection, copying, or examination by the citizens of this State, with certain exceptions, for the protection of the public interest, and any limitations on the right of access accorded [under OPRA] as amended and supplemented, shall be construed in favor of the public’s right of access.” *Libertarian Party of Cent. New Jersey v. Murphy*, 384 N.J. Super. 136, 139 (App. Div. 2006) (citing *N.J.S.A. 47:1A-1*). “The purpose of OPRA ‘is to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process.’” *Times of Trenton Publ’g Corp. v. Lafayette Yard Cmty. Dev. Corp.*, 183 N.J. 519, 535 (2005) (quoting *Asbury Park Press v. Ocean County Prosecutor’s Office*, 374 N.J. Super. 312, 329 (Law Div. 2004)).

These lofty descriptions of the purposes of OPRA are not mere bromides or empty statements of legislative intent. Our Supreme Court has stated that “Those who enacted OPRA understood that knowledge is power in a democracy, and that without access to information contained in records maintained by public agencies citizens cannot monitor the operation of our government or hold public officials accountable for their actions.” *Fair Share Housing Center, Inc. v. New Jersey State League of Municipalities*, 207 N.J. 489, 502 (2011).

The burden of proof in showing that a denial of access was justified rests solely with the Records Custodian. *N.J.S.A. 47:1A-6*; *Asbury Park Press v. Monmouth County*, 406 N.J. Super. 1, 7 (App. Div. 2009). Here, the documents sought by Plaintiff are “government records” within the meaning of OPRA. Under OPRA, a “government record”:

means any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of his or its official business by any officer, commission, agency or authority of the State or of any political subdivision thereof, including subordinate boards thereof, or that has been received in the course of his or its official business by any such officer, commission, agency, or authority of the State or of any political subdivision thereof, including subordinate boards thereof.
N.J.S.A. 47:1A-1.1.

In this case, Records Custodian defended their denial of access on the basis that the “videotape is part of a criminal investigatory record and is exempt from public disclosure under N.J.S.A. 47:1A-1.1, et seq.” (The denial is attached to the Luers Certification).

It is not clear why the video would be a criminal investigatory record. According to an April 24, 2014 media report, “Upon the review of the entire investigation conducted by the Middlesex County Prosecutor’s Office, the undisputed facts indicate that the use of deadly force by the two Perth Amboy Police Department patrol officers was justified under the law, and therefore, a grand jury investigation and/or review is not required,” according to “Acting Prosecutor Andrew Carey.”¹ The same article stated that the findings and recommendations were “forwarded to the state Division of Criminal Justice for final review by the Attorney General’s Office.” Finally, the article states that video confirmed the “officers’ accounts that [the decedent] lunged at them with the knife before [the police] fired their weapons.”

A record is a criminal investigatory record if it relates to a criminal investigation and is not required by law to be made, maintained or kept on file by the Defendant. Here, there is no evidence that there was a criminal investigation. Specifically, in the media report quoted

¹See http://www.nj.com/middlesex/index.ssf/2014/04/2_perth_amboy_cops_justified_in_fatally_shooting_city_man_in_december_prosecutor_says.html (last accessed June 1, 2015).

above, the Defendant stated that the matter would not be referred to the grand jury or reviewed by the grand jury. The police officers have not been charged in the matter. Therefore, based on the record that we have, there is no evidence that the video was a part of a “criminal” investigation.

To the extent that the video may be construed as part of an ongoing civil or criminal investigation, it should nonetheless be produced. Under OPRA, the following information “shall be available to the public within 24 hours or as soon as practicable” after a criminal investigation has commenced: (1) “where a crime has been reported but no arrest yet made, information as to the type of crime, time, location and type of weapon, if any;” (2) “if an arrest has been made, information as to the name, address and age of any victims . . .”; (3) “if an arrest has been made, information as to the defendant’s name, age, residence, occupation, marital status and similar background information and, the identity of the complaining party unless the release of such information is contrary to existing law or Court Rule”; (4) “information as to the text of any charges such as the complaint, accusation and indictment unless sealed by the court or unless the release of such information is contrary to existing law or court rule”; (5) “information as to the identity of the investigating and arresting personnel and agency and the length of the investigation”; (6) “information of the circumstances immediately surrounding the arrest, including but not limited to the time and place of the arrest, resistance, if any, pursuit, possession and nature and use of weapons and ammunition by the suspect and by the police”; and (7) “information as to circumstances surrounding bail, whether it was posted and the amount thereof.” *N.J.S.A.* 47:1A-3; *see also O’Shea v. Township of West Milford*, 410 N.J. Super. 371, 377 (App. Div. 2009) (discussing these exceptions).

In this case, if we assume that there was or is a criminal investigation (as claimed by the Defendant), then the video would clearly constitute “information of the circumstances immediately surrounding the arrest, including but not limited to the time and place of the arrest, resistance, if any, pursuit, possession and nature and use of weapons and ammunition by the suspect and by the police.”

Here, the video would show the circumstances surrounding the confrontation between the police and the decedent; would show the time and place of arrest and resistance; and, especially relevant here, would show the “possession and nature and use of weapons and ammunition by the suspect and by the police.”

Defendant may argue that the video can not constitute “information” that must be disclosed pursuant to *N.J.S.A. 47:1A-3(b)*. The video is almost certainly the best way to communicate to the public what happened in the shooting. In media reports, the decedent’s family and the authorities have presented irreconcilable versions of the events, which seem to center around whether the decedent possessed a knife, whether he lunged with the knife at the police officers, and whether the knife was “planted” on the decedent by the police. A video of the event is certainly a more reliable indicator of the “circumstances immediately” surrounding the incident than the competing interpretations offered by the parties in the wrongful death civil matter.

Finally, disclosure of the video would not be “inimical to the public interest” because the video is almost certainly the most objective rendering of the incident. We note that

other aspects of this incident have already been disclosed in media reports, including use of force reports and the 911 call made by the mother of the decedent.²

POINT III

COMMON LAW RIGHT OF ACCESS

If this Court should deny access to the records requested under OPRA, the Court should grant access under the common law right of access. The public's right of access to records is broader under the common law right of access than under OPRA. "Nothing contained in [OPRA] shall be construed as limiting the common law right of access to a government record, including criminal investigatory records of a law enforcement agency." *N.J.S.A.* 47:1A-8; *see also North Jersey Media Group Inc. v. State, Dep't of Personnel*, 389 N.J. Super. 527, 536 (Law. Div. 2006); *Bergen County Improvement Auth. v. N. Jersey Media Group, Inc.*, 370 N.J. Super. 504, 516 (App. Div. 2004). Thus, the right of access to records under the common law is broader than under OPRA. *North Jersey Media Group*, 389 N.J. Super. at 537.

The common law right of access has three elements: (1) the records must be common law public documents; (2) the person who seeks access must "establish an interest in the subject matter of the material," *South Jersey Publishing Co. v. New Jersey Expressway Auth.*, 124 N.J. 478, 487 (1991), and (3) the citizen's right to access "must be balanced against the State's interest in preventing disclosure." *Higg-A-Rella, Inc.*, 141 N.J. at 46; *see also Keddie v. Rutgers, The State University*, 148 N.J. 36, 50 (1997) (discussing these three elements).

Common law public records "include almost every document recorded, generated, or produced by public officials whether or not 'required by law to be made, maintained or kept

² See http://www.nj.com/middlesex/index.ssf/2014/12/perth_amboy_police_officers_planted_knife_on_body_of_man_they_killed_family_claims_in_lawsuit.html (last accessed June 1, 2015).

on file.” *Shuttleworth v. City of Camden*, 258 N.J. Super. 573, 582 (App. Div. 1992). Here, the records sought are public records because they are kept by the public agency. *Higg-A-Rella, Inc.*, 141 N.J. at 46 (defining a common-law record as one that is made by a public official in the exercise of their public function, either because the record was required or directed by law to be made or kept, or because it was filed in a public office). Plaintiff has standing to request these documents under the common law, a requirement that is easily met. “A citizen, and the press on its behalf, does not have to prove any personal interest in order to satisfy the common law standing requirement.” *Daily Journal v. Police Dep’t of City of Vineland*, 351 N.J. Super. 110, 122 (App. Div. 2002).

To determine whether the records should be disclosed to Plaintiffs, this Court must balance Plaintiff’s interest in disclosure against Defendant’s interest in confidentiality. In weighing whether disclosure outweighs confidentiality, New Jersey courts have weighed several factors, including

(1) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government; (2) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed; (3) the extent to which agency self-evaluation, program improvement, or other decisionmaking will be chilled by disclosure; (4) the degree to which the information sought includes factual data as opposed to evaluative reports of policy-makers; (5) whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and (6) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual’s asserted need for the materials. *Loigman v. Kimmelman*, 102 N.J. 98, 113 (1986).

There is a strong public interest in disclosing videos that depict the use of lethal force by police against civilians. The use of lethal force by police in several high-profile incidents across the

United States has rightfully renewed debate on police training and discipline, including the following incidents:

- The lethal shooting in the back of Walter L. Scott by Officer Michael T. Slager in North Charleston, South Carolina (Officer Slager has been charged with murder);
- The death of Eric Garner in New York City after a police officer applied a choke-hold to him (no criminal charges were brought against the officer); and
- The death of Freddie Gray in Baltimore after officers allegedly gave him a “rough ride” in a police transport vehicle (six police officers have been charged with felonies ranging from assault to murder).

These and other deaths have invigorated substantial civic debate over the use of force and the use of lethal force by the police. The release of this video would be a contribution to that debate.

POINT IV

AWARD OF REASONABLE ATTORNEYS' FEES

If the Court orders Defendants to produce the documents at issue, the Court should find that Plaintiff is the prevailing party and, under OPRA's fee-shifting provision and the common-law right of access, award Plaintiff a reasonable attorneys' fee and costs. *N.J.S.A. 47:1A-6; Mason v. Hoboken*, 196 N.J. 51, 79 (2008) (concluding that catalyst theory applies to fee awards under both OPRA and the common law right of access).

Respectfully submitted,



Walter M. Luers

WALTER M. LUERS, ESQ. - 034041999
LAW OFFICES OF WALTER M. LUERS, LLC
Suite C202
23 West Main Street
Clinton, New Jersey 08809
Telephone: 908.894.5656
Attorney for Plaintiff

<p>JOHN P. SCHMIDT, Plaintiff, v. ANDREW C. CAREY in his official capacity as PROSECUTOR OF MIDDLESEX COUNTY, Defendant.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY</p> <p>DOCKET NO. _____</p> <p>CIVIL ACTION</p> <p>CERTIFICATION OF WALTER M. LUERS</p>
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WALTER M. LUERS, of full age, who is the attorney for the Plaintiff in this action,
hereby certifies and says:

1. Attached hereto are true and correct copies of Plaintiff's April 14, 2015
OPRA request and Defendants' April 15, 2015 denial.
2. The foregoing statements made by me are true. I am aware that if any of
the foregoing statements made by me are willfully false I am subject to punishment.

DATED:



Walter M. Luers

Fwd: Records Request to the Middlesex County Prosecutor's Office

Subject: Fwd: Records Request to the Middlesex County Prosecutor's Office
From: NJ Open Government <njgovwatchdog@gmail.com>
Date: 4/15/2015 10:58 AM
To: Walter Luers <wluers@luerslaw.com>

----- Forwarded message -----

From: **NJ Open Government** <njgovwatchdog@gmail.com>
Date: Tue, Apr 14, 2015 at 7:04 PM
Subject: Records Request to the Middlesex County Prosecutor's Office
To: james.oneill@co.middlesex.nj.us

To the Custodian of Records: Please consider this my request for government records pursuant to the Open Public Records Act (OPRA) and the common law right of access. Please send all responses and responsive records, if possible, via e-mail to me. Thank you.

Requestor's Name: John P. Schmidt
Address: DO NOT use regular mail either for replying to this request or sending me the requested records. Please use e-mail instead.
E-Mail: njgovwatchdog@gmail.com
Phone: [856-889-0633](tel:856-889-0633)

Records requested:

For the December 4, 2013 fatal shooting of Dixon Rodriguez by the Perth Amboy Police, I would like a copy of the video (and audio, if any) that captured the shooting. I know that a video exists because a December 7, 2013 Star Ledger article quotes Acting Prosecutor Andrew Carey as saying that "there is a security video that recorded the incident and confirms the officers' accounts of what happened."

Subject: Fwd: Fwd: Records Request to the Middlesex County Prosecutor's Office
From: Walter Luers <wluers@luerslaw.com>
Date: 6/1/2015 11:06 AM
To: wluers@luerslaw.com

----- Forwarded message -----

From: James O'Neill <james.oneill@co.middlesex.nj.us>
Date: Wed, Apr 15, 2015 at 10:51 AM
Subject: RE: Records Request to the Middlesex County Prosecutor's Office
To: NJ Open Government <njgovwatchdog@gmail.com>

April 15, 2015

John P. Schmidt

Response to OPRA request via e-mail:

njgovwatchdog@gmail.com

Dear Mr. Schmidt,

The Middlesex County Prosecutor's Office is in receipt of your request under the state's Open Public Records Act regarding *"the December 4, 2013 fatal shooting of Dixon Rodriguez by the Perth Amboy Police, I would like a copy of the video (and audio, if any) that captured the shooting. I know that a video exists because a December 7, 2013 Star Ledger article quotes Acting Prosecutor Andrew Carey as saying that "there is a security video that recorded the incident and confirms the officers' accounts of what happened."*

The videotape is part of a criminal investigatory record and is exempt from

public disclosure under N.J.S.A. 47:1A-1.1, et seq. Therefore, your request must be denied.

With very limited exceptions (e.g., criminal complaints, indictments), the contents of the prosecutor's criminal investigatory file, open or closed, is not a public record and is exempt from disclosure under N.J.S.A. 47:1A-1.1, et seq. See *Kovalcik v. Somerset County Prosecutor's Office*, 206 N.J. 581, 591 (2011) (recognizing that criminal investigatory records are exempt from disclosure under OPRA); *Bent v. Twp. of Stafford Police Dep't*, 381 N.J. Super. 30, 38-39 (App. Div. 2005). Indeed, the 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." The GRC further noted that the exemption for criminal records applies "without reference to the status of the investigation."

You have a right to appeal this decision. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council (GRC) by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, N.J. 08625, by e-mail at grc@dca.state.nj.us, or at its website at www.state.nj.us/grc.

The GRC can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk.

Regards,

James E. O'Neill

Public Information Officer / Records Custodian

Middlesex County Prosecutor's Office

25 Kirkpatrick Street, 3rd floor

New Brunswick, N.J. 08901

From: NJ Open Government [mailto:njgovwatchdog@gmail.com]

Sent: Tuesday, April 14, 2015 7:05 PM

To: James O'Neill

Subject: Records Request to the Middlesex County Prosecutor's Office

To the Custodian of Records: Please consider this my request for government records pursuant to the Open Public Records Act (OPRA) and the common law right of access. Please send all responses and responsive records, if possible, via e-mail to me. Thank you.

Requestor's Name: John P. Schmidt

Address: DO NOT use regular mail either for replying to this request or sending me the requested records. Please use e-mail instead.

E-Mail: njgovwatchdog@gmail.com

Phone: [856-889-0633](tel:856-889-0633)

Records requested:

For the December 4, 2013 fatal shooting of Dixon Rodriguez by the Perth Amboy Police, I would like a copy of the video (and audio, if any) that captured the shooting. I know that a video exists because a December 7, 2013 Star Ledger article quotes Acting Prosecutor Andrew Carey as saying that "there is a security video that recorded the incident and confirms the officers' accounts of what happened."

Click [here](#) to report this email as spam.

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<p>JOHN P. SCHMIDT, Plaintiff, v. ANDREW C. CAREY in his official capacity as PROSECUTOR OF MIDDLESEX COUNTY, Defendant.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY</p> <p>DOCKET NO. _____</p> <p>CIVIL ACTION</p> <p>ORDER TO SHOW CAUSE</p>
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THIS MATTER being brought before the Court by the Law Offices of Walter M. Luers, LLC, attorney for Plaintiff John P. Schmidt, seeking relief by way of summary action pursuant to R. 4:67-2(a), based upon the facts set forth in the verified complaint and supporting papers filed herewith; and the Court having determined that this matter may be commenced by order to show cause as a summary proceeding pursuant to N.J.S.A. 47:1A-6 and for good cause shown,

IT IS on this _____ day of _____, 2015 *ORDERED* that the Defendant Andrew C. Carey, in his official capacity as the Prosecutor of Middlesex County, appear and show cause on the _____ day of _____, 2015 before the Honorable Travis L. Francis, A.J.S.C., Middlesex County Courthouse, 56 Paterson Street, New Brunswick, New Jersey at ___ o'clock in the _____ noon or as soon thereafter as counsel can be heard, why judgment should not be entered:

A. Ordering Defendants to disclose a copy of the video (and audio, if any) from the December 4, 2013 fatal shooting of Dixon Rodriguez by the Perth Amboy Police;

B. An award of costs of this action and reasonable attorneys' fees;

C. Such other, further and different relief as the Court may deem equitable and just.

IT IS FURTHER ORDERED AS FOLLOWS:

A. A copy of this order to show cause, verified complaint and all supporting affidavits or certification submitted in support of this application be served upon the Defendants **PERSONALLY OR BY OVERNIGHT DELIVERY WITH SIGNATURE CONFIRMATION ONLY** within seven (7) days of the date hereof, in accordance with Rules 4:4-3 and R. 4:4-4, this being original process. **DELIVERY BY REGULAR MAIL AND CERTIFIED MAIL, RETURN RECEIPT REQUESTED, SHALL NOT CONSTITUTE EFFECTIVE SERVICE.**

B. The plaintiff must file with the Court their proof of service of the pleadings on the Defendants no later than three (3) days before the return date.

C. Defendants shall file and serve a written answer, an answering affidavit or a motion returnable on the return date to this order to show cause and the relief requested in the verified complaint and proof of service of the same within fifteen (15) days of service. The answer, answering affidavit or a motion, as the case may be, must be filed with the Clerk of the Superior Court in Middlesex County and a courtesy copy of the papers must be sent directly to the chambers of Assignment Judge Francis by hand delivery or overnight carrier.

D. The plaintiff must file and serve any written reply to the defendants' order to show cause opposition by no later than three (3) days before the return date. The reply papers must be filed with the Clerk of the Superior Court in Middlesex County and a courtesy copy of the reply papers must be sent directly to the chambers of Assignment Judge Francis by hand delivery or overnight carrier.

E. If the defendants do not file and serve opposition to this order to show cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that the plaintiff files a proof of service and a proposed form of order at least three (3) days prior to the return date.

F. If the plaintiff has not already done so, a proposed form of order addressing the relief sought on the return date (along with a self-addressed return envelope with return address and postage) must be submitted to the court no later than three (3) days before the return date.

G. Defendants take notice that the Plaintiff has filed a lawsuit against you in the Superior Court of New Jersey. The verified complaint attached to this order to show cause states the basis of the lawsuit. If you dispute this complaint, you, or you attorney, must file a written answer, answering affidavit or a motion returnable on the return date to the order to show cause and proof of service before the return date of the order to show cause.

H. These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf. Include a \$135 filing

fee payable to the “Treasurer State of New Jersey.” You must also send a copy of your answer, answering affidavit or motion to the Plaintiff’s attorney whose name and address appear above, or to the Plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve your answer, answering affidavit or motion with the fee or judgment may be entered against you by default.

I. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at http://www.judiciary.state.us/prose/10153_deptyclerklawref.pdf.

J. The Court will entertain argument, but not testimony, on the return date of the order to show cause, unless the Court and parties are advised to the contrary no later than three days before the return date.

K. ABSENT A SHOWING OF EXCEPTION AND UNFORESEEN CIRCUMSTANCES, THE COURT WILL NOT ENTERTAIN ADJOURNMENT REQUESTS RECEIVED ON THE DAY BEFORE THE RETURN DATE.

HON. TRAVIS L. FRANCIS, A.J.S.C

WALTER M. LUERS, ESQ. - 034041999
LAW OFFICES OF WALTER M. LUERS, LLC
Suite C202
23 West Main Street
Clinton, New Jersey 08809
Telephone: 908.894.5656
Attorney for Plaintiff

<p>JOHN P. SCHMIDT, Plaintiff, v. ANDREW C. CAREY in his official capacity as PROSECUTOR OF MIDDLESEX COUNTY, Defendant.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY</p> <p>DOCKET NO._____</p> <p>CIVIL ACTION</p> <p>ORDER</p>
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THIS MATTER having been brought before the Court pursuant to *R. 4:67-2(a)* by Walter M. Luers, Esq., of the Law Offices of Walter M. Luers, LLC, counsel John P. Schmidt by Verified Complaint and Order to Show Cause for an Order requiring Defendant Andrew C. Carey to provide Plaintiff with a copy of the video (and audio, if any) from the December 4, 2013 fatal shooting of Dixon Rodriguez by the Perth Amboy Police, and having heard oral argument on _____, 2015; and for the reasons set forth on the record on _____, 2015, and for good cause shown,

IT IS on this ____ day of _____, 2015

A. ORDERED that Defendants provide to Plaintiff a copy of the video (and audio, if any) from the December 4, 2013 fatal shooting of Dixon Rodriguez by the Perth Amboy Police; and it is further

B. ORDERED that Plaintiff is the prevailing party in this matter and is entitled to an award of reasonable attorneys' fees and costs and if the parties are not able to resolve the quantum of the amount amicably Plaintiff shall submit an application for such an award via motion; and it is further

C. ORDERED that Plaintiff shall serve a copy of this Order upon Defendants within seven days of service of this order upon Plaintiff.

HON. TRAVIS L. FRANCIS, A.J.S.C.

This order was:

OPPOSED _____

UNOPPOSED _____