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VIA E-MAIL

March 21, 2023

Camelia M. Valdez
Passaic County Prosecutor's Office
401 Grand Street
Paterson, NJ 07505
(973) 881-4800

**Re: Records Request Related to Law Enforcement Directive No. 2020-14
Concerning Police Interactions with People in Mental Health Crisis**

Dear Prosecutor Valdez:

In December 2020, the New Jersey Attorney General's Office issued "Law Enforcement Directive No. 2020-14" to improve law enforcement interactions with special needs populations and people living with mental or behavioral health issues.¹ Two years and three months later, Paterson police officers shot and killed Najee Seabrooks in his home while he was experiencing a mental health crisis. The Passaic County Prosecutor's Office (PCPO) has made no information accessible to the public about its efforts to comply with the Directive.

The American Civil Liberties Union of New Jersey (ACLU-NJ) writes on behalf of the Paterson Healing Collective (PHC) and other concerned community members who read that the PCPO would not share minutes of meetings related to Directive 2020-14 with a reporter from The Paterson Press. The PCPO stated that it has held meetings pursuant to Law Enforcement Directive No. 2020-14 but will not release minutes of the meetings because the sessions were not "public."² The ACLU-NJ and PHC dispute this generic characterization and the implication that the activities of the PCPO Working Group should be shielded from public scrutiny.

As you are aware, the PCPO has government records transparency obligations under both the Open Public Records Act (OPRA) and the common law right of access. **To that end, PHC is**

¹ N.J. Office of the Attorney Gen., *Attorney Gen. Law Enforcement Directive No. 2020-14* (Dec. 21, 2020), https://www.nj.gov/oag/dcj/agguide/directives/ag-Directive-2020-14_County-Working-Groups-and-Statewide-Steering-Committee.pdf.

² Joe Malinconico, *Najee Seabrooks: Did NJ's 2020 directive on mental health cases prompt any change?*, NorthJersey.com (Mar. 15, 2023), <https://www.northjersey.com/story/news/paterson-press/2023/03/15/najee-seabrooks-new-jersey-attorney-general-mental-health-cops/70007771007/>.

formally requesting the following records pursuant to both OPRA and the common law about the meetings and policy recommendations the PCPO has made under the Directive:

- 1. Records containing the names and titles of the members of the PCPO Working Group convened under the Directive;**
- 2. Records reflecting the dates, time, location, and duration of all past PCPO Working Group meetings and any scheduled future meetings;**
- 3. Minutes of all PCPO Working Group meetings, including the names of attendees; and**
- 4. The quarterly reports prepared by the PCPO Working Group as required under the Directive.**

If you determine that any portion of the requested materials is exempt from release, we request that you redact the portion that you believe is exempt and provide us with copies of the remaining, non-exempt portions. If any or part of this request is denied, please send us a letter describing the material and listing the specific exemption(s) on which you rely. We request that your office provide these records in an electronic format to the email address above.

For the purposes of evaluating the PCPO's obligations to release information under the common law right of access, we provide you with the following information about the materials requested, community members' interests in the subject matter of the records, and the reason those interests outweigh PCPO's interests in blocking access to the records. *North Jersey Media Group, Inc. v. Township of Lyndhurst*, 229 N.J. 541, 578-80 (2017).

I. Responsibilities Under Law Enforcement Directive 2020-14

Law Enforcement Directive No. 2020-14, issued by then-Attorney General Gurbir S. Grewal, required each county prosecutor's office to convene a "County Working Group" and to provide quarterly updates on its progress and plans to a Statewide Steering Committee.³

More specifically, the Directive required the Working Groups to ensure the adequacy and availability of countywide protocols, programs, and resources to support people in mental health crisis and people with developmental disabilities, cognitive impairments, substance use disorders, and intellectual disabilities.⁴ The Working Groups were to be comprised of law enforcement, mental health, behavioral health, substance abuse, and special needs professionals. The Directive also suggested that fire and emergency services employees, representatives from the Judiciary, 9-1-1 operators, police communications personnel, and community advocates, be considered for membership and participation.⁵

Each Working Group was tasked with devising a "Mental Health Toolbox" containing a list of statewide and countywide mental health resources "to assist law enforcement when they encounter individuals in mental health crisis."⁶ Examples of resources include: programs for

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

mental health or social workers to respond to calls for service instead of law enforcement or along with law enforcement; diversionary programs in the criminal justice system; access to mental health and drug treatment screening and treatment options; and county crisis screening and follow-up services with mobile outreach and accessibility.⁷

In addition to submitting quarterly reports to the Statewide Steering Committee,⁸ the Working Groups were charged with affirmatively identifying “gaps in the availability of resources and services, and then [proposing] strategies to the Steering Committee and to local agencies to fill those gaps.”⁹

II. Disclosure Requirements Under the Common Law

The common law right reaches a wider array of documents than OPRA, its statutory counterpart.¹⁰ Under the common law, a requestor’s “right to access must be balanced against the State’s interest in preventing disclosure.”¹¹ In its 1986 *Loigman v. Kimmelman* decision, the New Jersey Supreme Court identified six factors that inform this balancing test:

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 policymakers;
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.¹²

⁷ *Id.*

⁸ Law Enforcement Directive 2020-14 established a Statewide Steering Committee “to work collaboratively with the County Working Groups.” *Id.* The Statewide Steering Committee is comprised of individuals or representatives from or including: the Office of Public Integrity and Accountability; the Division of Criminal Justice; the New Jersey State Police; the County Prosecutor’s Association of New Jersey; the New Jersey Association of Chiefs of Police; the Sheriff’s Association of New Jersey; the County Jail Wardens Association; the Department of Human Services; the New Jersey Ombudsman for Individuals with Intellectual or Developmental Disabilities and Their Families; a designated County Mental Health Administrator; mental health advocates to be designated by the Attorney General; and any other organizations as determined by the Attorney General. *Id.*

⁹ *Id.*

¹⁰ *Educ. Law Ctr. v. New Jersey Dep’t of Educ.*, 198 N.J. 274, 302 (2009).

¹¹ *Higg-A-Rella, Inc. v. Cnty. of Essex*, 141 N.J. 35, 46 (1995).

¹² *Loigman v. Kimmelman*, 102 N.J. 98, 113 (1986).

These *Loigman* factors do not constitute a complete list of relevant considerations, and largely examine only one side of the balancing test—the need for confidentiality.¹³ The *Loigman* Court emphasized that the factors must be assessed against “the importance of the information sought to the plaintiff’s vindication of the public interest.”¹⁴ Our courts have emphasized that the *Loigman* factors are not exhaustive and have considered other factors that impact the other side of the balance.¹⁵

The relevant common-law analysis compels disclosure here. Importantly, disclosure carries no potential to reveal personal information about civilians or to discourage members of the public from providing information to the PCPO Working Group. The Working Group is tasked with formulating resources and best practices based on the expertise of health and law enforcement professionals, not public input. With the exception of the Working Group’s quarterly reports, which may include evaluative content, the request seeks purely factual information. Finally, the PCPO has not undertaken “remedial” or “investigatory” proceedings that obviate the need for the requested records; the PCPO Working Group’s mandate extends considerably beyond the scope of any discrete incident that has been or will be the subject of investigation.

In addition, the records are a matter of great public interest, which outweighs any interest in their confidentiality. New Jersey courts have consistently acknowledged and accorded significant weight to the public interest served by the disclosure of records related to law enforcement policies and conduct. “Because we entrust police officers to carry firearms, drive emergency vehicles, and exercise the most awesome and dangerous power that a democratic state possesses with respect to its residents—the power to use lawful force to arrest and detain them, officers can expect a higher degree of scrutiny of their performance, and have a lower expectation of privacy.”¹⁶ In *Rivera v. Union County Prosecutor’s Office*, for example, the New Jersey Supreme Court determined that internal affairs reports concerning a former police director’s misconduct should be disclosed under the common law right of access.¹⁷ The Court recognized that public access fosters accountability and thereby increases public trust in law enforcement, particularly after incidents of violence or wrongdoing cause that trust to falter or fail.¹⁸

The records sought here are far less sensitive than those the Court deemed subject to disclosure in *Rivera* but implicate the same pressing public interest considerations. In *Rivera*, a police director’s racist and sexist conduct had shaken public trust.¹⁹ Here, Najee Seabrooks’s killing at the hands of the police officers whom he called for help has had a similarly destabilizing and traumatizing impact. As his community struggles to understand and process the tragedy of his death, repaired confidence in law enforcement will rely on open, frank, and informed dialog.

¹³ *Rivera v. Union Cty. Prosecutor’s Office*, 250 N.J. 124, 147 (2022).

¹⁴ *Loigman*, 102 N.J. at 113.

¹⁵ *Rivera*, 250 N.J. at 148 (setting forth factors to be considered in evaluating requests regarding police internal affairs files).

¹⁶ *In re Attorney Gen. Law Enforcement Directive Nos. 2020-5 & 2020-6*, 465 N.J. Super. at 147–48 (internal quotations and citations omitted).

¹⁷ 250 N.J. 124, 151 (2022).

¹⁸ *Id.* at 150.

¹⁹ *Rivera*, 250 N.J. at 135.

Records related to the activities of the PCPO's Working Group are a small but critical component of this discourse.

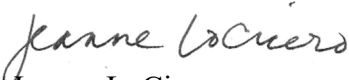
III. Conclusion

The functions of the PCPO Working Group—to create and review protocols, programs, and resources aimed at enhancing law enforcement's ability to safely and effectively serve people with disabilities and people in mental health crisis—concern the welfare and civil rights of all New Jerseyans. The PCPO should take swift and affirmative steps to share with the public the names of the individuals involved in carrying out these functions, when they meet, what they have learned, and what they recommend for the future of policing in our communities.

This request reflects only the bare minimum requirements of law. The PCPO Working Group can and should do much more to increase its transparency and communicate its plans and progress. The collective safety and healing of Passaic County's – and our state's – communities depend on it.

Thank you for your attention to this matter. If you have any questions, please feel free to contact me.

Sincerely,


Jeanne LoCicero
Legal Director

cc: PCPO Records Custodian (via U.S. Mail)