

STATE'S RESPONSE

Section II Reason for Delay:

Ms. (Removed) claims that the State failed to make timely disclosure of evidence, misleading the Court, waiting two (2) months to follow a Court order, and hindering the defendant's Court ordered review of evidence.

- Ms. (Removed) claims that it took 35 days to respond to her request for Discovery. The actual amount of days was 21 business days. Rule 7:7-7(2)(g) states that the prosecutor shall respond to the Discovery request in accordance with paragraph (b) of this rule within 10 days after receiving this request. The rule is not specific on whether days are actual or business days. The first email, with attachments, was sent April 21, 2016. Ms. (Removed) called the day of Court (April 27, 2016) and claimed that she did not receive the email. I again emailed her on April 27. While every effort was made to respond to Ms. (Removed) request in accordance to Rule 7:7-7(2)(g) within the ten (10) days, it is not always possible to do so. We are a small department and this officer is assigned many different duties that may result in a Discovery request taking a little longer to fulfill. I made every effort to ensure that Ms. (Removed) received her Discovery in such a time that would allow her to properly prepare her defense for her April 27th Court appearance.
- Ms. (Removed) claims that on 5/25/2016, the State, without authority or reason, misled the Court and caused considerable delay, specifically by Lt. (Removed) reporting on record that the State could not release the radar operating manual PDF file to the defendant because it was copyrighted material. There was no attempt to mislead the Court. It is the practice of this Police Department, as well as others, to allow defendants, by appointment, to come in and review the manuals. This police department will not release copyrighted materials protected by Federal Copyright laws without written permission from the manufacturer. Attempts were made to contact MPH but our calls were never returned. Ms. (Removed) references 17 U.S. Code 107 and New Jersey Court Rules regarding the method of release of Discovery records. When possible, all records are emailed in PDF format.
- Ms. (Removed) claims that the State took an unreasonable amount of time to follow a Court order by not emailing MPH Industries to gain permission for the release of the radar operating PDF file. I don't recall the Court issuing such an order in any of the Court proceedings. Rather, I volunteered to make the call after Ms. (Removed) stated that they would not release the manuals to her without speaking with me first. At least three calls were placed to MPH Industries but the calls were never returned.
- Ms. (Removed) claims that the State has not shown due diligence in making Discovery available to the Defendant in a timely manner by Lt. (Removed) not returning the Defendant's emails or phone calls from 5/23/16 to 7/12/16. All relevant Discovery was emailed to Ms. (Removed) on April 21, 2016 and Ms. (Removed) was called and emailed and advised of the progress of the calls made to MPH Industries. Ms. (Removed) claims that she emailed Lt. (Removed) on 5/23/16, 5/31/16, 6/9/16, 6/14/16, 6/20/16, 6/29/16, 7/2/16, and 7/10/16. A review of the

email account shows that Ms. (Removed) only sent two emails on 5/23/16 and 5/31/16.

- Ms. (Removed) claims that the State did not make a diligent effort to comply with an order and legally proper Discovery request causing further delay. On 8/24/16, Lt (Removed) was ordered by the Court to make the radar operating manual and training manual available to the Defendant for review at the police station on 9/7/16. On August 24, 2016, during the scheduled (Removed) Municipal Court session, Judge (Removed) ordered Lt. (Removed) and Ms. (Removed) to agree upon a date that Ms. (Removed) could come in and review the radar manuals. September 7, 2016 was agreed upon by both parties. Ms. (Removed) arrived at the station at approximately 11:00am and was brought into the squad room and sat at the patrol desk. I positioned the computer, which is quite large, monitor in such a manner that Ms. (Removed) was able to read the screen. Prior to reviewing the manuals, I asked Ms. (Removed) if she could see the screen and she said, "Yes". Ms. (Removed) also came across the desk several times to get a closer look. I again offered to reposition the monitor and Ms. (Removed) said that she was fine. Ms. (Removed) asked several questions about the material in the manual and I answered them and Ms. (Removed) stated that she understood. It is true that Ms. (Removed) was not allowed to touch the monitor as there are confidential files stored on the computer but was not forced to view the manuals from the opposite side of the desk. At 11:30am and after having her questions answered and reviewing the radar manuals, Ms. (Removed) stated that she had to leave to pick up her daughter. Ms. (Removed) asked if I would be around and available later in the day and I advised her that I would be around to approximately 4:30pm. Ms. (Removed) never called or returned to the station that day. However, Ms. (Removed) did call on September 9, 2016 and requested that the manuals be emailed to her. I advised her again that I would not email them to her and reminded her that she reviewed them on September 7th and asked if she wanted to come back in to review the material and she declined.

It should be noted that Ms. (Removed) expressed to me during other Court sessions of her intent to carry this on until the Court just dismissed the matter and delayed the matter by not scheduling time earlier in the year to come in and review the radar training manuals as offered to her in the April 21, 2016 email.