

CHIEF[^] ROBERT A. VERRY, C.P.M., M.L.P.A., M.B.A.

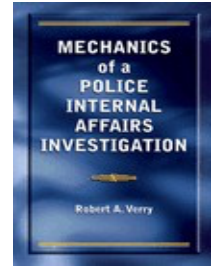
Licensed Private Detective, License No.9629

Certificated Freelance Paralegal

Post Office Box 47 | SBB | NJ | 08880-0047

C – 732.302.9520 | F – 732.377.8710

BobVerry@BobVerry.com | ChiefVerry@gmail.com



Disciplinary Hearing Officer
Grievances | Unfair Practice
Internal Affairs | Harassment | Workplace Investigator

Internal Affairs Professional Standards/Guidelines
Employee Misconduct | Employee Discipline
OPRA | Common Law (Internal Affairs/Police Records)

Robert is **not** a lawyer. If you need legal advice, please contact a lawyer. (^-Retired SBB-NJ)

CONCENTRATION

OPRA IT!!

Warning: If the record (e.g., police report, work schedule, photograph, audio, video) is created for official police business, officers need to think twice before walking out of headquarters with it. Take for example the familiar practice of using your private cell phone to take pictures of a crash (more on this below); a sergeant sends an email to you that you find offensive, or you write a DWI report and want a copy for your home file. First off, all of these records are official business records of the department, and second, if you want the record or think you need it to support a whistleblower or harassment complaint, anti-discrimination lawsuit, or disciplinary matter, write down exactly what record you want and discuss its lawful removal first with your Union or a private attorney because walking out the door with it could not only end up costing you your job but also your freedom.

In New Jersey, theft of a “public record, writing or instrument kept, filed or deposited according to law with or in the keeping of any public office or public servant” is a third-degree crime. N.J.S.A. 2C:20-2g. How this is applied can be examined in a 2015 Supreme Court decision, (State v. Saavedra, 222 N.J. 39 (2015)), where a public employee alleged, she was discriminated against by her employer and filed a lawsuit against her employer. Through

Discovery it was determined that the employee produced government records she allegedly removed or copied in support of her lawsuit that later resulted in her being indicted by the grand jury for theft and official misconduct.

An earlier case, Quinlan v. Curtiss-Wright, 204 N.J. 239 (2010), held that employees can take or copy confidential employer documents under certain circumstances and established a seven-question test to determine if an employee is protected when taking documents under the Law against Discrimination. (Three chief questions of the seven are: (1) how the employee obtained the record; (2) what they did with it; and (3) what was its content.)) However, one essential difference between Quinlan and Saavedra is that Quinlan was a private-sector employee and Saavedra was not. In fact, Saavedra raised a Quinlan defense, but the Court held that Quinlan did not involve criminal prosecution (e.g., Official Misconduct) and, therefore, the Court was not held to the elements in Quinlan if shown that Saavedra committed a crime.

Therefore, while both Quinlan and Saavedra are both worth reading in full, there are several noteworthy takeaways every officer should consider before removing any record from headquarters such as:

1. If an officer wants a police department record **don't take it**, submit an Open Public Records Act ("OPRA") request. Under the Act, requests can be submitted anonymously if you do not want your identity known. Factually, most times it is easier and quicker to get police records through OPRA than it is through the Discovery process.

2. Remember before you walk out the door that an element of Official Misconduct is obtaining a benefit for oneself and possessing that record through unofficial channels could amount to a benefit. Keep in mind, there are procedures in place (e.g., OPRA, Freedom of Information Act, Discovery) that officers can use legally and to their advantage to get the records that will benefit them; therefore, don't expose yourself to even the hint of criminality or an investigatory interview.
3. Taking a copy of the original record outside headquarters does not seem to water down the crime because in Saavedra the Court did not distinguish between the removals of an original document versus a copied document. Likely this is because if an officer copies a record the tangible costs are the electricity, copy machine's wear, and tear, paper, and ink, and the intangible costs are the officer's salary while they are making the copies. Emailing or faxing yourself the record would include the service charges, etc.; and
4. The pictures of a crash, crime scene, victim's bruises, etc., on your private phone, will likely be viewed as evidence; therefore, **DON'T USE YOUR OWN PHONE** to take pictures.

Finally, there are competent OPRA attorneys who are ready, willing, and able to file a complaint on your behalf (even anonymously before the Government Records Council) if access to the government record you legitimately requested is unlawfully denied.

If you have any questions or want a copy of the court's decisions, please feel comfortable emailing me (BobVerry@BobVerry.com) as I am always in the background.