

RESOLUTION 230 -19

Resolution Calling for Study Commission to Review the Open Public Records Act

WHEREAS, the Borough of Clayton strongly believes in and supports open transparent government, and that citizens and residents have the right to be informed about the workings of government in order to best participate in a democracy; and

WHEREAS, on January 8, 2002 then Acting Governor DiFrancesco signed into law the Open Public Records Act (OPRA) which mandates that government records shall be available, with limited exceptions, for public access and simplifying the procedures for requesting such specific records; and

WHEREAS, the intent of the law was to provide the public with easy access to government records with an uncomplicated process for obtaining the records and eliminating bureaucratic red tape; and

WHEREAS, over the course of 18 years OPRA has been a positive light, but it has also been fraught with abuse and misuse, and has become an unanticipated financial cost to the taxpayers of New Jersey; and

WHEREAS, the Borough of Clayton has labored under a well-intended law that has spiraled out of control, due to the volume and nature of requests, the cost to taxpayers in responding to the requests, and the potential liability in having to pay disproportionate prevailing party attorney's fees should the requests turn into litigated matters, as well as the liability in determining which documents shall be released, with or without redaction, while attempting to maintain individual privacy; and

WHEREAS, it is not only the volume of OPRA requests that challenge our resources, but it is also the cost associated with reviewing, retrieving, and processing the OPRA request(s) by public entity personnel and counsel and possibly defending our action(s) before the Government Records Council or in Superior Court; and

WHEREAS, the Borough of Clayton received and responded to one hundred and three (103) OPRA requests in 2017, ninety-one (91) OPRA requests in 2018, and to date has received and responded to seventy-one (71) OPRA requests as of September 1, 2019; and

WHEREAS, the Borough of Clayton municipal staff has spent approximately thirty-five hours (35) responding to OPRA requests received in 2019 to date, and a yearly average of approximately forty-five (45) hours since 2017; and

WHEREAS, due to the often conflicting case law and Government Record Council decisions, as well as the unique characteristics of OPRA request, the Borough of Clayton must often times rely on the municipal attorney to review certain OPRA requests, resulting in additional fees of approximately \$10,745.00 in response to OPRA requests in 2017, \$3,412.50 in response to OPRA requests in 2018, and currently has spent \$4,107.00 through June 2019 in response to OPRA requests in 2019; and

WHEREAS, with limited exceptions OPRA has not been amended to address the clear and apparent advancement in technology that has changed the way government records are

created, stored, and/or transmitted; the various interpretive decisions; privacy concerns; abuse for commercial gain; and/or the ever increasing cost to taxpayers; and

WHEREAS, as the current law approaches its twentieth (20th) anniversary it has outgrown its original intended use and has become ripe for comprehensive review and reform;

NOW, THEREFORE BE IT RESOLVED that the governing body of the Borough of Clayton appeals to the legislature to form a Commission comprised of Mayors, Municipal Clerks, Municipal Managers, Attorneys, Police Chiefs, open government advocates, privacy experts, members of the media, citizens and other appropriate stakeholders, to review and examine the effects of OPRA on local government and the needs to be fulfilled by the law, and use the Commission's findings to perform a comprehensive reform of OPRA; and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded to Assemblyman John Burzichelli and Assemblyman Adam Taliaferro, Assembly Speaker Craig Coughlin, Senate President Stephen Sweeney, Senator Weinberg, Executive Director of the Government Records Council, the Governor of the State of New Jersey, the Municipal Clerks Association of New Jersey and New Jersey State League of Municipalities.

ADOPTED at a regular council meeting of the Mayor and Council of the Borough of Clayton, which was held on Thursday, November 14, 2019.

BOROUGH OF CLAYTON



THOMAS BIANCO, Mayor

ATTEST:



CHRISTINE NEWCOMB, Municipal Clerk

Distribution List

Your State Senator and Assembly Representatives (information can be found at www.njleg.state.nj.us/members/legsearch.asp)

Hon. Phil Murphy
Governor, State of New Jersey
State House
PO Box 001
Trenton, NJ 08625

Hon. Stephen Sweeney
Senate President
Senate District 3
935 Kings Highway
Suite 400
West Deptford, NJ 08086
sensweeney@njleg.org

Hon. Craig Coughlin
Assembly Speaker
Assembly District 19
569 Rahway Avenue
Woodbridge, NJ 07095
asmcoughlin@njleg.org

Hon. Loretta Weinberg
Senator, District 37
545 Cedar Lane
Teaneck, NJ 07666
senweinberg@njleg.org

Frank F. Caruso
Executive Director
Government Records Council
PO Box 819
Trenton, NJ 08625-0819
Frank.Caruso@dca.state.nj.us

MCANJ
88 Inskip Ave
Ocean Grove, NJ 07756
executivedirector@NJClerts.org

NJLM
222 West State Street
Trenton, NJ 08608
lbuckelew@njlm.org