

## RESOLUTION 2012-241

### RESOLUTION OF THE TOWNSHIP OF BARNEGAT, COUNTY OF OCEAN, STATE OF NEW JERSEY OPPOSING LEGISLATIVE BILLS S-1452/A-2425 REFORM TO THE OPEN PUBLIC RECORDS ACT

**WHEREAS**, legislation has been introduced to reform and modernize the Open Public Records Act (S-1452/A-2425); and

**WHEREAS**, the Barnegat Township Governing Body agrees that government records should be readily accessible and transparent but there must be an appropriate balance between the need for openness and transparency in government and citizen's reasonable expectation of privacy; and

**WHEREAS**, among the costly unfunded mandates and impractical new requirements of S-1452/A-2425 are the following:

- The expansion of the definition of government record to include records that are required by law to be made, maintained or kept on file by any public agency that will lead to a records custodians violation of OPRA for the non-existence of government records created before their tenure with the public body; and
- The creation of a definition for "advisory, consultative or deliberative" material that may be contrary to the well established definition in case law leading to costly litigation; and
- The expanding of the definition of government record to include electronic communications, such as e-mails and text messages, concerning public business among an effective majority of the members that occurred prior to a meeting that is unworkable and unmanageable as the technology does not always exist to make "hard copies" or digital copies of text messages, the records custodian does not always have access to the electronic communications and certain cell phone carriers will not provide this information without a subpoena; and
- The inclusion of a subjective definition for "reasonable" that may be contrary to the well established definition in case law leading to costly litigation; and
- A new requirement that any video or audio recordings or public meetings should be available in unedited form will be in direct violation of the Open Public Meetings Act requirement that requires the redacting of discussions in closed session until the matter can legally be released; and
- A new requirement on how to handle redactions and special services fees is time consuming and costly, especially considering that the Government Records Council has already addressed these procedures in their Custodians' Toolkit, which should be codified; and
- A provision that permits the records custodian to advise a requestor that a government record is readily available on the public agency's website;

however, the bill requires the records custodian to directly provide the records to the requestor if they do not have access to a computer but does not define what is meant by "access to a computer"; and

- A new costly requirement that when there is a special service charge the requestor must be provided, at no cost:
  - 1) An index generally describing the responsive government records to be provided and to the greatest extent possible the index shall include the name of each record or brief description of the record or general categories of records.
  - 2) A detailed breakdown of how special charges were assessed and if records are exempt or redacted, and
  - 3) A description of those records; and
  
- A provision that prohibits the assessment of a special service charge for requests for budgets, bills, vouchers, contracts and public employee salaries and overtime unless the request is deemed voluminous, which is undefined and subjective; and

**WHEREAS**, the provisions of S-1452/A-2425 place financial, time, manpower and other burdens on municipalities at a time when municipalities are forced to layoff municipal employees, impose furloughs and reduce departmental budgets so that the municipalities can meet the strict CAP requirements with decreased revenues and increasing operating expenses; and

**WHEREAS**, the totality of the new requirements of S-1452/A-2425 will be a significant cost driver for local and state government with no known appropriation contemplated or any alternate means to offset these costs, such as reasonable increase in fees; and

**WHEREAS**, while the Barnegat Township Governing Body strives for and agrees that open and transparent government is essential to the democratic process, the provisions of S-1452/A-2425 will make government inefficient;

**NOW, THEREFORE, BE IT RESOLVED** that the Mayor and Township Committee of the Township of Barnegat, County of Ocean, State of New Jersey, does hereby oppose S-1452/A-2425, as currently drafted for reasons stated above, and strongly urges the State Senate and Assembly to oppose these bills; and

**BE IT FURTHER RESOLVED** that the Municipal Clerk be directed to forward copies of the above resolution, upon adoption, to Senate President Stephen Sweeney, Senator Loretta Weinberg, Senator Barbara Buono, Senator Shirley Turner, Assembly Speaker Sheila Oliver, Assemblyman Gordon Johnson, all 10<sup>th</sup> District legislators, Governor Chris Christie, the Ocean County Board of Chosen Freeholders, all Ocean County Mayors, the New Jersey State league of Municipalities and the Municipal Clerk's Association of New Jersey.

**CERTIFICATION**

I, Sharon L. Auer, Acting Municipal Clerk, of the Township of Barnegat, County of Ocean, State of New Jersey do hereby certify that the foregoing Resolution was duly adopted by the Township Committee at their regular meeting held on the 23<sup>rd</sup> day of April 2012, at the Municipal Complex, 900 W. Bay Avenue, Barnegat New Jersey 08005.

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Sharon L. Auer  
Acting Municipal Clerk