

## RESOLUTION 2019 – 399

### RESOLUTION OF THE TOWNSHIP OF BARNEGAT, COUNTY OF OCEAN, STATE OF NEW JERSEY, RESOLUTION CALL FOR STUDY COMMISSION TO REVIEW THE OPEN PUBLIC RECORDS ACT.

**WHEREAS**, the Township of Barnegat 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**, Township of Barnegat 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 Township of Barnegat received and responded to 418 OPRA requests in 2017, 598 OPRA requests in 2018, and to date has received and responded 483 OPRA requests as of September 1, 2019; and

**WHEREAS**, the Township of Barnegat municipal staff has spent approximately *400 hours* responding to OPRA requests received in 2019 to date, and a yearly average of approximately 1100 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 Township of Barnegat must often times rely on the municipal attorney to review certain OPRA requests, resulting in additional fees of approximately \$2000.00 in response to OPRA requests in 2017, attorney flat fee billing in response to OPRA requests in 2018, and 2019; and

**WHEREAS** *OPRA requests of salary requests, police reports, and construction permits/survey information were the most costly and time consuming which interrupted operations etc.*; 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 (20<sup>th</sup>) 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 Township of Barnegat 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 Assembly District 9, 10 and 12, Senator Christopher J. Connors, 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 the New Jersey State League of Municipalities.

### **CERTIFICATION**

I, Michele A. Rivers, 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 Barnegat Township Committee at their regular meeting held on the 3<sup>rd</sup> day of December 2019, a quorum being present and voting in the majority.

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Michele A. Rivers, RMC  
Municipal Clerk

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