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cc: Adm.

**Lashway, Lisa**

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**From:** Gabrielle Voight-Cherna [gvoight-cherne@whartonnj.com]  
**Sent:** Tuesday, December 29, 2009 11:02 AM  
**To:** 'Barbara Shepard'; 'Penny'; 'Boonton Town Clerk'; 'Butler Borough Clerk'; 'Chatham Borough Clerk'; 'Chatham Township Clerk'; 'Chester Borough Clerk'; 'Chester Township Clerk'; 'Denville Township Clerk'; 'Dover Town Clerk'; 'East Hamover Township Clerk'; 'Florham Park Borough Clerk'; 'Hanover Township Clerk'; 'Harding Township Clerk'; 'Jefferson Township Clerk'; 'Kinnelon Borough'; 'Long Hill Township Clerk'; 'Madison Borough Clerk'; 'Mendham Borough Clerk'; 'Mine Hill Township Clerk'; 'Montville Township Clerk'; 'Morris Plains Borough Clerk'; 'Morristown Town Clerk'; 'Mount Arlington Borough Clerk'; Lashway, Lisa; 'Mountain Lakes Borough Clerk'; 'Netcong Borough Clerk'; 'Pequannock Township Clerk'; 'Randolph Township Clerk'; 'Riverdale Borough Clerk'; 'Rockaway Borough Clerk'; 'Rockaway Township Clerk'; 'Roxbury Township Clerk'; 'Washington Township Clerk'  
**Subject:** R-171-09  
**Attachments:** R-171-09.pdf

Attached please find a Resolution adopted by the Mayor and Council on December 28, 2009 urging the legislature to amend OPRA.

Gabrielle Evangelista

Municipal Clerk

Borough of Wharton

973-361-8444 x 2713

**A RESOLUTION URGING THE LEGISLATURE TO AMEND THE OPEN  
PUBLIC RECORDS ACT TO ADDRESS VARIOUS TECHNICAL AND  
PRACTICAL ISSUES**

**WHEREAS, Governor Donald T. DiFrancesco signed the Open Public Records Act (OPRA), N.J.S.A. 47A:1A-1 et seq., into law on January 8, 2002 to increase public access to state government records, stating that the bill is about access and what open government should be: Government of the people; and**

**WHEREAS, Governor DiFrancesco stated at the bill signing that the bill was not perfect, and acknowledged the hard work and negotiations between legislators and the many interested parties, including the New Jersey League of Municipalities, that went into the compromise; and**

**WHEREAS, elected and appointed municipal officials recognize the importance and virtue of access to public records for all citizens, as it encourages openness and transparency in government and increases confidence in the operation of government; and**

**WHEREAS, along with transparency of government comes the responsibility to safeguard citizens' reasonable expectation of privacy; and**

**WHEREAS, the law granting access to public records also created a 13-member Privacy Study Commission whose mission was to study the privacy issues raised by the collection, processing, use, and dissemination of information by public agencies in light of the recognized need for openness in government, and to recommend specific measures, including legislation, the commission may deem appropriate to deal with these issues and to safeguard the privacy rights of individuals.**

**WHEREAS, in the course of its study, the commission reviewed the current and proposed means used for the collection, processing, use and dissemination of information by state and local government agencies; and**

**WHEREAS, the Privacy Study Commission studied three (3) specific areas: the disclosure of home addresses and telephone numbers, commercial use of public information held by public agencies and the impact of technology on privacy concerns; and**

**WHEREAS, although municipal officials and municipal clerks have embraced OPRA and support the fundamental purpose of OPRA, compliance with OPRA is a problem for municipalities due to conflicting decisions, requestors testing both the records custodian and OPRA, and a loss of efficiency and out-of-pocket costs to municipalities; and**

**WHEREAS, municipal officials and municipal clerks believe that OPRA needs to be reformed to create standardization in providing records to the public while protecting citizens' reasonable expectation of privacy and to prevent individuals, attorneys and businesses from profiting from the provisions of OPRA where they have no legitimate interest in the records they are requesting.**

**NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Wharton, that the Governor and State Legislature are urged to review the provisions of OPRA and consult with municipal officials, municipal clerks, the Government Records Council, the New Jersey Press Association and the New Jersey League of Municipalities to reform OPRA to: AR-306-09**

- 1. Adoption of the following recommendations of the Privacy Study Commission:
  - a. Home telephone numbers, including cell phone numbers, should not be disclosed.**
  - b. Individuals should be permitted to opt-out of disclosure of their home addresses.**
  - c. E-mail addresses provided by individuals to government entities should be accorded the same protection as telephone numbers and remain confidential.**
  - d. Exemption from access from the commercial use of information should be contained in legislation, regulations or by Executive Order.**
  - e. Consideration of the proposition that when the secondary or derivative use of a public record is a commercial/profit-making use, the commercial user should be expected to contribute to the cost of recovery of developing and maintaining such records.****
- 2. Amending the current fee schedule to a uniform per page rate and clarifying the term "actual costs" for Special Service Charge to include the cost of labor.**
- 3. When agencies adopt regulations exempting certain records from disclosure, those agencies need to recognize the impact of technology on the ability to search records and make the regulations comprehensive enough to ensure that the adopted regulation cannot be circumvented by technology.**
- 4. The Governor should immediately fill the two vacant public seats on the Government Records Council in order to best protect the interest of all parties involved in the proper implementation of the OPRA statute.**
- 5. Clear authorization for the Records Custodian to bill for time spent organizing data, researching documents or translating documents to a different medium. An example is scanning documents to provide them electronic copies. Records Custodians should not be required to create a document that is not typically maintained by the municipality.**
- 6. A distinction should be made between those who seek a record for their own**

personal use and those who intend to make a secondary commercial use of the information, as recommended by the Privacy Study Commission.

7. The municipality should be entitled to receive a seven (7) day extension for any large or complicated requests. Currently, the requestor must agree. This particularly affects small municipalities with a small or part-time staff.

8. The requestor should be required to pick up their records within a week so that the Records Custodian does not have to keep them indefinitely. If the records are not picked up within one week, the request should be considered fulfilled.

9. Direct the Government Records Council or Office of Administrative Law as to when attorney's fees should be awarded to requestors under OPRA to limit the award of attorney's fees to situations where there was a willful violation of OPRA that resulted in the requestor failing to receive a legitimately requested document.

10. Create regulations to prevent a requestor from repeatedly using OPRA to request the same documents as this creates an unnecessary and unreasonable burden on the taxpayers of the community who must underwrite the costs of these repeated responses.

11. Documents which are already available to the public on a municipality's website should be excluded from OPRA.

12. The Government Record Council should have mandatory mediation for all complaints. Currently, mediation takes place only where both parties agree.

BE IT FURTHER RESOLVED, copies of this resolution shall be forwarded to the Commissioner of the Department of Community Affairs, the Government Records Council, the members of the New Jersey State Legislature, the Governor of the State of New Jersey, Morris County Municipal Clerks and the New Jersey League of Municipalities.

Adopted: December 28, 2009

ATTEST:

  
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Gabrielle Evangelista,  
Borough Clerk

BOROUGH OF WHARTON

  
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WILLIAM J. CHEGWIDDEN,  
MAYOR