

**RESOLUTION**  
of the  
**BOROUGH OF NEW PROVIDENCE**  
Resolution No. 2019-247

Council Meeting Date: 11-18-2019

Date Adopted: 11-18-2019

TITLE: RESOLUTION CALLING FOR STUDY COMMISSION TO REVIEW THE  
OPEN PUBLIC RECORDS ACT

Councilperson Cumiskey submitted the following resolution, which was duly seconded by Councilperson Geoffroy.

**WHEREAS**, the Borough of New Providence 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 New Providence 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 New Providence received and responded 397 OPRA requests in 2017, 440 OPRA requests in 2018, and to date has received and responded to 530 OPRA requests as of September 1, 2019; and

**WHEREAS**, the Borough of New Providence municipal staff has spent and continues to spend countless hours responding to OPRA requests 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 New Providence must often times rely on the municipal attorney to review certain OPRA requests, resulting in additional Borough legal expenses; 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 New Providence, 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 Hon. Phil Murphy, Governor of the State of New Jersey, Assembly Speaker Craig Coughlin, Senate President Stephen Sweeney, Senator Weinberg, Executive Director of the Government Records Council, Assemblywoman Nancy Munoz, Assemblyman Jon Bramnick, Senator Tom Kean, the the Municipal Clerks Association of New Jersey and New Jersey State League of Municipalities.

APPROVED, this 18th day of November, 2019.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
CUMISKEY	X			
DESARNO	X			
GENNARO			X	
GEOFFROY	X			
MUÑOZ	X			
ROBINSON	X			
MORGAN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 18th day of November, 2019.

Wendi B. Barry, Borough Clerk