

BOROUGH OF HILLSDALE
RESOLUTION 22118

**RESOLUTION CALLING FOR REVIEW AND REFORM OF
OPRA**

WHEREAS, the New Jersey Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 et seq., enacted in 2002, has been in effect long enough to review the impact on Municipalities; and

WHEREAS, it is the position of the Bergen County League of Municipalities (BCLOM), which represents all 70 municipalities in Bergen County, that OPRA can and must be improved upon to make it less onerous on municipalities and protect the safety and welfare of the public; and

WHEREAS, municipal staff and budgets are increasingly utilized to accommodate the requestors and commercial entities who bombard municipalities with public records requests to the extent that in some instances, additional personnel are hired primarily to handle such requests; and

WHEREAS, municipalities are already required by state law to post and provide certain information and documentation on their municipal websites, including but not limited to, annual budgets, annual financial statements, annual audits, public meeting notices and meeting minutes; and

WHEREAS, under existing law, OPRA fees are woefully inadequate for the amount of time and effort needed to search for documents; it takes valuable time away from staff — not only in the Clerk's office — but also among other departments that may be involved in the same request; and

WHEREAS, OPRA has become broadly construed in favor of access and the requestor and, a requestor who prevails in any proceeding in appealing a denial of access is permitted to collect exorbitant attorney's fees; **conversely, however, the resources and guidance available to record custodians and municipal counsel tasked with responding to such requests has narrowed drastically in the ever-changing OPRA arena, muddled by subsequent, voluminous and often-conflicting court decisions that contradict the original intent of the law and will continue to do so in the absence of necessary legislative reform;** and

WHEREAS, OPRA law allows outside businesses, and activist groups to utilize municipal time and services for marketing leads or private commercial gain, and for litigants to use OPRA as a method of discovery; and

WHEREAS, a clear distinction needs to be made between individual and commercial and discovery requests; and

WHEREAS, serious concerns about breaches or misuse of personal information exist along with the potential for OPRA to be exploited and abused by requestors, as a threat, harassment, or retaliatory measure to bury local governments in hundreds of requests, not necessarily because the requested records are of any particular interest, but merely because they can and have been emboldened by the courts to do so, to the significant detriment of all other municipal business; and

WHEREAS, most importantly, OPRA must be reformed to enable municipalities, their respective record custodians and legal counsels to **protect the safety and welfare of the general public;**

WHEREAS, over the years, court decisions have chipped away at the reasonable expectation of privacy provision of the law, thus allowing the law to be molded and wielded as a tool that severs any sensible balance of transparency, and instead, **now perpetuates rampant and dangerous degrees of for-profit data-mining, unsolicited marketing and uncontrolled publications of records on internet search engines specifically designed to circumvent and bypass what few protective measures currently exist under OPRA,** and all while allowing the requestor to remain cloaked in **anonymity**, should they choose to exercise that option; and

WHEREAS, the pandemic has resulted in a startling and exponential rise in fraud and identity theft, crimes that were already notoriously difficult to investigate, track and prosecute; OPRA, left unchecked and unreformed, continues to add fuel to this already dangerous fire; and

WHEREAS, in a most reprehensible instance in the midst of the pandemic, the unthinkable happened when the young son of a U.S. District Court Judge was senselessly killed by an individual who had managed to compile a dossier of personal information about the Judge including a home address, ushering in the passage of Daniel's Law; and

WHEREAS, while this law as intentioned provides for necessary strides and long overdue amendments to OPRA, the scope of protection provided is critically deficient, the implementation creates challenges for custodians and municipal officials that remain unaddressed by law, with limited channels for guidance, while the vast remainder of the Open Public Records Act continues to be left recklessly unreformed, potentially leaving any officials not covered under Daniel's Law or even, the general public at-large exposed to the whim of any nefarious OPRA requestor lurking in the shadows of those demanding transparency at any cost;

WHEREAS, Assembly Bill No. 4894, introduced January 17, 2019, calling for the creation of a study commission to review OPRA, to-date, has been left negligently stagnant and, to-date the legislative approach to addressing the dangers of OPRA have been fragmented, haphazard and contradictory at best, leading to a dire need for streamlined overhaul and reform, which, at a minimum should include the following:

- **Immediate creation of a study commission on OPRA.**
- **Uniformity under the law: municipalities shall not be subject to any provision under OPRA that the legislature or other state agencies are, by contrast, exempt from.**
- **Provide a universal platform for clear and concise guidance for records custodians. Such guidance should be in place prior to any laws that impact OPRA going into effect.**
- **Require that official OPRA Request forms be used in order to be considered valid, including certifications by the requestor of (1) non-conviction of an indictable offense and (2) that information obtained will not be used for profit, solicitation, marketing or commercial gain, or published as part of a separate internet database or search engine.**
- **Prohibit OPRA requestors from remaining anonymous.**
- **Require that requestors provide a State of New Jersey address in order to be valid (OPRA should not apply to out-of-state requests).**
- **Prohibit requests for commercial purposes.**
- **Exempt email addresses (also serves as a deterrent to spoofing, phishing and other cyber scams and crimes).**
- **Exempt information maintained for emergency notification purposes.**
- **Exempt any information related to minor individuals, disabled persons and senior citizens as well as classes of citizens who are vulnerable to exploitation of their information.**
- **Exempt personal identifying information from Motor Vehicle Accident Reports, including driver's license numbers, dates of birth (DOBs), home addresses, VINs and registration/plate numbers, unless the requestor is a subject of the record, or their designated legal or insurance representative.**
- **Exempt pet license information to a need-to-know basis only (health department, police department, veterinarian of record, hospital, bite victim) to deter rising pet thefts and potential for targeted thefts of non-large-breed dog owners.**
- **Reaffirm exemption of unlisted telephone numbers, including personal cell phones.**
- **Exempt property owner names, CAMA Data and reaffirm the exemption of property record cards.**
- **Protections afforded under Daniel's Law should be afforded to all government officials, employees, volunteers and members of the general public as the threats from the disclosure of personal information is not unique to those rightfully protected under Daniel's Law.**
- **Provide a carve out for fee-shifting where a municipality in good faith and without clear guidance through Statute or case law denies a request or redacts information which could reasonably be interpreted as not subject to disclosure.**

NOW, THEREFORE BE IT RESOLVED, that the Mayor and Council of the Borough of Hillsdale find it imperative that the New Jersey Senate and Assembly review and reform the New Jersey Open Public Records Act.

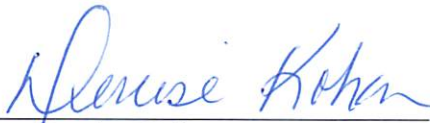
BE IT FURTHER RESOLVED, that copies of this resolution are sent to all New Jersey State Legislators, the New Jersey State League of Municipalities, the New Jersey Municipal Clerks'

Association, the Bergen County Municipal Clerks' Association, the New Jersey State Association of Chiefs of Police and the Bergen County Police Chiefs' Association.

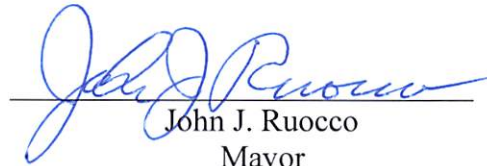
Council member	Motion	Second	Yes	No	Absent	Abstain	Recuse
DeRosa, Anthony	X		X				
Escobar, John			X				
Horvath, Zoltan			X				
Lundy, Abby		X	X				
Pizzella, Frank					X		
Trochimiuk, Janetta			X				
Ruocco, John							

Adopted: June 14, 2022

Attest:



Denise Kohan
Municipal Clerk



John J. Ruocco
Mayor