



**Township Council**

c/o Township Clerk  
Teaneck, NJ 07666

Meeting: 10/23/18 07:00 PM

Department: Township Clerk

Category: Encourage

DOC ID: 5036

**RESOLUTION 204-2018**

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**Call for the Legislature to Amend the Open Public Records Act to Permit  
Municipalities to Rely on the Government Records Council as a Defense to  
Attorneys' Fees or to Abolish the Government Records Council Altogether**

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TOWNSHIP OF TEANECK  
BERGEN COUNTY, NJ

**204-2018**

**CALL FOR THE LEGISLATURE TO AMEND THE OPEN PUBLIC  
RECORDS ACT TO PERMIT MUNICIPALITIES TO RELY ON THE  
GOVERNMENT RECORDS COUNCIL AS A DEFENSE TO  
ATTORNEYS' FEES OR TO ABOLISH THE GOVERNMENT RECORDS  
COUNCIL ALTOGETHER**

**WHEREAS**, the Open Public Records Act (“OPRA”) creates an administrative agency called the Government Records Council (“GRC”); and

**WHEREAS**, one of the purposes of the GRC is to issue “advisory opinions” to municipalities on compliance with OPRA; and

**WHEREAS**, the normal purpose of an administrative agency like the GRC is to provide guidance for regulated community on the subject matter of the agency; and

**WHEREAS**, a requestor challenging a denial of access under OPRA has the choice of whether to file in Superior Court or with the GRC; and

**WHEREAS**, OPRA states that GRC opinions are not precedential in complaints filed in Superior Court challenging a denial of access under OPRA; and

**WHEREAS**, the current structure of OPRA allows a requestor to take advantage of the GRC when it has issued opinions favorable to the requestor’s case but to disregard the GRC altogether when it is more favorable for the requestor; and

**WHEREAS**, municipalities routinely rely on the GRC for guidance and the GRC even has a “hotline” for custodians of records to call for guidance; and

**WHEREAS**, under OPRA municipalities must pay attorney’s fees to a requestor who prevails in a challenge to a denial of access; and

**WHEREAS**, OPRA does not give the GRC or the Superior Court any discretion on whether to award attorneys’ fees, even when a municipality relies on a GRC opinion that is ultimately held to be wrong; and

**WHEREAS**, for example, in Scheeler v. Ad. Cnty. Mun. Joint. Ins. Fund. N.J.Super.(App Div. May 16, 2018), the Appellate Division rejected a GRC opinion that OPRA contained a citizenship requirement; and

**WHEREAS**, several municipalities, including Paramus, had relied upon that GRC opinion and had to pay attorneys’ fees in denial of access complaints even though they relied on that opinion;

and

**WHEREAS**, if the regulated community cannot rely on the GRC then the GRC should not issue opinion;

**NOW THEREFORE BE IT RESOLVED**, that the Township of Teaneck requests that the legislature amend OPRA to provide either that good faith reliance on a GRC opinion is a defense to the award of attorneys' fees in a denial of access complaint or that the GRC simply be abolished.