

Let the Open Public Record reflect ...

Local opinions vary on possible changes to OPRA and OPMA

By Cheryl Hehl
Staff Writer

Citizens could have easier access to public records if amendments to two laws pass muster with legislators. But, if county and local elected officials have anything to say about it, the changes will never happen.

Ten years ago if anyone wanted copies of public records it was not an easy process. In fact, the majority of the time it was next to impossible.

In 2002, everything changed when the Open Public Records Act was revised so citizens, including the media, could obtain information previously kept under lock and key by municipal, county, state and school officials.

But while OPRA was initially hailed as a great step in the direction of the public's right to know laws, during the last decade, advances in technology made this process increasingly difficult. Despite evidence that an update was needed, it took one legislator's own experience with this issue to initiate change.

When Democrat State Senator Barbara Buono, Middlesex, found the state Department of Education would not provide information about how New Jersey lost out on a \$400 million federal grant, she was frustrated and confused.

"In the end I had to go to some very extensive lengths to get the information. It was a painful process of subpoenaing the fired education commissioner before the committee," she said.

In early March at a legislative hearing to clarify and strengthen the open public meetings and laws, Buono told legislators about her own personal experiences, stressing the need to change this legislation.

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Residents routinely 'suit up' in defense of Open Public Records

By Cheryl Hehl
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There are always two sides to every story, and when it comes to the public's right to know, a line has definitely been drawn in the sand between two opposing forces.

Action in recent weeks by a state senate committee could make it considerably easier for citizens and the media to obtain public records and documents. However, until something is finalized, the war between those who protect these public records and those who want copies continues to produce lawsuits that cost taxpayer dollars.

Ten years ago when the Open Public Records Act was revised it was supposed to make it easier for citizens and the media to obtain public records and documents. Some citizens, though, maintain county and local officials continue to skirt the OPRA law, forcing them to file lawsuits in order to obtain the documents they are entitled to receive.

Union resident Anthony Nardiello contends that after filing repeated OPRA requests with township clerk Eileen Birch that resulted in denials, he became frustrated and even angry. But he maintains this is nothing new.

"In the past, requests for information have been blocked by Ms. Birch under flimsy excuses on her part," he said.

But, while Nardiello maintains he had every right to the public documents he requested, Birch explained last week that she is obligated as township clerk and keeper of public records to obey the law.

"I told Mr. Nardiello the records he requested involved medical
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'Public has a strong interest' in OPRA requests

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issues and therefore could not be released," Birch added. "Number 26 in the Governor's executive order backs up that if there is a medical or psychological problem in the records involving a particular person, those documents cannot be released."

Nardiello was seeking copies of any records related to an emergency call that took place at a neighbor's home Jan. 27, 2008, but after he discovered that Birch would not release the documents he hired attorney Victor Rotolo to take over.

Rotolo subsequently sent Birch a copy of a civil action against Nardiello's neighbors and a subpoena requiring the township clerk to turn over the records and documents requested. At that point Birch said she had no other choice but to hand over the information originally requested.

"Subpoena's are not unusual," she said, adding that this is the only circumstances she would be able to release the information.

Nardiello said Friday that he did receive the records but said he should not have to go to the lengths he did to get information that is public record. Birch disagreed.

"Some records just cannot be released, she said, adding "it's the law."

For the most part, though, Birch said the ebb and flow of OPRA requests from citizens as well as the media go smoothly. And, she said, if it is a large amount of records, she can, by law, ask for an extension so she can gather the information.

"Certain things are immediate access, but depending on what we are doing, how busy our office is at that moment, we can't always get a copy of, for example, minutes of a meeting," Birch explained, adding that she then will ask a person to return in several hours or up to two or three days.

Another problem Birch often finds is that

those requesting records do not know what they want.

"Sometimes they will write down what they think they want, but then it turns out it's not what they wanted after all," the township clerk said, adding that it is important that requests are clear about what records or documents are being requested.

"Either way, I just want to do my job right, as any employee should," Birch said.

Things are not so easily accomplished at the county level, where countless lawsuits resulted from one activist's attempts to obtain records that were denied.

Tina Renna, President of the Union County Watchdog Association, has been embroiled in a legal tug of war with county officials for years because she was denied what she says were "absolutely public records."

In early March Renna filed her latest lawsuit against the county because they turned down a request for investigatory records involving county employee Patrick Scanlon Jr., the son of Freeholder Deborah Scanlon.

In March, Renna said she made an OPRA request because of a complaint against Scanlon Jr., concerning allegations that he allegedly sold county property for personal gain.

"We believe the county's investigation of Scanlon Jr. has been closed without formal charges being filed," Renna said about the incident, noting this was a very good reason for her requesting those records.

"The public has a strong interest in learning the details of the county's investigation to determine whether nepotism played any role in the investigation of Scanlon Jr.," the activist said.

According to public records obtained by *LocalSource*, Scanlon Jr. was hired by the county as a laborer in August, 2011, at a

salary of \$33,521 annually. Scanlon Jr. later was convicted of Theft by Unlawful Taking on Jan. 25 and sentenced to six months in jail and five years probation by Union County Superior Court Judge Joseph P. Donohue. County records show he left the county payroll sometime in January, 2012.

Donohue is the brother-in-law of Union County Undersheriff, Assemblyman and Union Township Democratic Municipal Chairman Joseph Cryan.

Donohue began his judicial career in the Essex County Sheriff's office under then sheriff John Cryan, Joseph Cryan's father, and undersheriff Patrick Scanlon, Scanlon Jr.'s grandfather.

However, while it is unknown what county property Scanlon Jr. took, this was not a first offense. According to records obtained by *LocalSource*, Scanlon Jr. first was arrested in Essex county in 2008 on narcotics charges, which was later downgraded and moved to municipal court.

A few months later he again was arrested in Union County on narcotics charges, but again the charges were downgraded to municipal court.

Two months later in October, 2008, Scanlon Jr. was arrested on charges of Theft by Unlawful Taking and pled guilty, but the case was dismissed at sentencing.

After that the freeholder's son had a succession of narcotics charges in Union and Middlesex county.

On April 12, Renna filed another lawsuit against the county in an effort to get the investigatory records she requested initially through OPRA. She maintains the county deliberately thwarts the OPRA law to avoid providing information that could make them look bad.

But Renna and Nardiello are not the only ones finding it difficult to view what is con-

sidered public record.

The Union School district also had to contend with a lawsuit from a resident who felt the school board did not comply with an OPRA request. In the end the Superior Court of New Jersey found in favor of the resident and against the school board, who had to comply with the request for a tape of a particular meeting.

According to Walter Luers, an attorney from Clinton in Hunterdon County, who specializes in lawsuits involving OPRA violations, Roxanne Ciampi submitted an OPRA request July 27, 2011, to Board Secretary Patricia Detri for a copy of an audio recording of the July 19, 2011, public board meeting.

However, Detri said she could not comply with the request because the board did not have the equipment to transfer the tape to a compact disk.

Luers said Friday that Detri eventually gave Ciampi six CD's but none contained the meeting date the resident requested. Detri later said the tape broke five minutes into the meeting in question and there was nothing further to provide. The issue continued to remain unresolved and the resident resorted to filing a lawsuit.

According to the transcript of Superior Court Judge Lisa Chrystal's opinion letter dated April 3, regardless whether a malfunction was to blame, the court notes that any limitations on the right of access accorded under OPRA are "construed in favor of the public's right to know."

Chrystal ruled that Ciampi was "entitled to the tape of July 19, 2011, meeting as requested according to OPRA and which was admittedly not provided within seven days of an Oct. 25, 2011, second request. The judge also ruled that a copy of the audio tape was to be given to Ciampi.