



Memorandum

IMMEDIATE ACTION REQUIRED

TO: Municipal Managers, Clerks and Attorneys

FROM: Kraig Conn, Legislative Counsel
Casey Cook, Senior Legislative Advocate

SUBJ: 2017 Legislation on Public Records/Attorney's Fees

DATE: May 24, 2017

During the 2017 legislative session, [Enrolled CS/CS/SB 80](#) passed relating to public records. The Governor signed the bill on May 23, 2017, which is the bill's effective date. That is, the provisions of the bill are now effective law throughout Florida. To implement various parts of the new law, immediate action by your city is required.

While the new law relates specifically to the award of attorney fees in public record civil actions, it's intended to address the abuses in the public records process over the past several years. A detailed review of the new law follows; however, it's designed to accomplish three primary goals: to be entitled to an award of attorney fees, a complainant (requestor) must provide written notice of a public record request to the custodian of public records (which is typically the city clerk); a complainant must not have requested to inspect or copy a public record or participated in the civil action for an "improper purpose;" and if there is an "improper purpose" the complainant may not recover any costs or attorney fees and is responsible for paying for the city's costs and attorney fees in the civil action.

A condition for the custodian of public records to receive written notice of the public record request is that the custodian's contact information must be prominently posted at the city's primary administrative building (in which public records are routinely created, sent, received, maintained, and requested) and on the city's website (if the city has a website). If the custodian's contact information is not prominently posted, the complainant is not required to provide the written notice of the public record request. In operation, this means that a public record requestor could make either a verbal public record request or make a public record request to a person other than the custodian, and may be able to recover attorney fees upon meeting the other conditions of the new law. Therefore, it is highly recommended that each city prominently post the custodian's contact information in the city's primary administrative building (typically city hall) and on the city's website (if the city has a website). The contact information should likely include:

- the name of the custodian of public records
- mailing address
- email address
- telephone number
- fax number

The new law applies only to public record requests made on or after the effective date of the law. Therefore, in order to take full advantage of the protections under the new law, you are encouraged to prominently post the contact information for the city's custodian of public records immediately.

Public Records/Attorney Fees CS/CS/SB 80 (Steube and Garcia)

The bill substantially modifies the attorney fees provision in chapter 119, Florida Statutes, relating to public records. A court must assess the reasonable costs of enforcement, including reasonable attorney fees, against the responsible agency if the court determines: 1. the agency unlawfully refused to permit the record to be inspected or copied; and 2. the complainant provided written notice identifying the public record request to the agency's custodian of public records at least 5 business days before filing the civil action. The 5 business day notice requirement is waived if the agency does not prominently post the contact information for the agency's custodian of public records in the agency's primary administrative building in which public records are routinely created, sent, received, maintained, and requested, and on the agency's website, if the agency has a website.

The court must determine whether the complainant requested to inspect or copy a public record or participated in the civil action for an "improper purpose." "Improper purpose" means a request to inspect or copy a public record or to participate in the civil action primarily to cause a violation of chapter 119 or for a frivolous purpose. If the court determines there was an improper purpose, the court may not award the reasonable costs of enforcement to the complainant, and must award against the complainant and to the agency the reasonable costs, including reasonable attorney fees, incurred by the agency in responding to the civil action.

The attorney fees section of chapter 119, Florida Statutes, does not create a private right of action authorizing the award of monetary damages for a person who brings an action to enforce the provisions of chapter 119. Payments by the responsible agency may include only the reasonable costs of enforcement, including reasonable attorney fees, directly attributable to a civil action brought to enforce the provisions of chapter 119. The bill applies only to public records requests made on or after the effective date of the bill.

Effective date: May 23, 2017.