



2017 Legislative Issue Briefs



Public Records

Priority Statement:

The Florida League of Cities SUPPORTS public records reform to discourage or eliminate schemes designed to generate violations of public records laws and disrupt agency operations.

Talking Points:

- The Florida League of Cities SUPPORTS transparency and access to public records.
- Hundreds of cities and other governmental entities have been targeted by opportunistic individuals exploiting Florida's public records law.
- These individuals follow a standard scheme or operation to elicit a technical violation of the public records laws, such as:
 - They approach a government employee and demand certain records.
 - Many times the employee is not the "custodian of public records" and inadvertently violates the law by asking for a person's contact information so they can contact the requestor when the record is ready.
 - The requestor then files a lawsuit against the city for this violation and often, almost simultaneously, offers a settlement seeking attorney's fees and costs.
- Money spent fighting alleged public records violations is money not being used to provide services to municipal citizens. These schemes are designed to do nothing more than raid public treasuries.
- Legislation is needed to clarify the public records law and create a separation between individuals who actually want public records and those who only want to harass the agency or obtain attorney fees.
- The Florida League of Cities SUPPORTS SB 80 (Steube) and HB 163 (Burgess).
- The bills amend current law to require a complainant to provide written notice to the custodian of record five business days before filing a civil action in order to be guaranteed attorney fees in a public record lawsuit. This notice provision applies only if the city has posted the contact information for the custodian of records in the primary administrative building where records are created, maintained, and requested, and on its website.
- The bills also allow the court to assess and award reasonable costs of enforcement and attorney fees against the complainant if the request or civil suit was filed for an improper purpose.

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- Payments made by the responsible agency may only include the reasonable costs of enforcement, including reasonable attorney fees, directly attributable to a civil action brought to enforce the public record law.

Background:

The Florida League of Cities believes that access to public records is a fundamental right and that this access improves transparency and accountability. Cities, as well as numerous other governmental entities, are required to comply with the public records laws in Chapter 119, Florida Statutes. While every city incurs some level of expenses in complying with public records requests, numerous cities have incurred extraordinary or unreasonable costs. The reasons for these extraordinary costs can vary, but include records requests clearly designed to be harassing in nature (either by the frequency of requests or the extent of any particular request); requests designed to generate a technical violation of the public records laws; and requests designed to do nothing more than serve as the basis of a lawsuit, typically with offers to the city to settle and pay attorney’s fees and costs.

Several individuals and entities around the state have developed a “cottage industry” designed to produce technical violations of the public records laws. These individuals have a standard method of operation. They will frequently show up at a public office, or the office of a private entity providing services to the public entity, and demand to inspect remote or obscure documents (such as insurance coverage documents). The employees working in these offices may not be used to receiving public records requests, and are clearly not the “custodian of public records.” (For cities, the custodian of public records is typically the city clerk.) In attempting to comply with the public records request, the staff members may technically violate the public records laws (e.g., asking the requestor for his or her name and contact number, asking the requestor to sign an entry log, stating that they believe the information requested is not subject to the public records laws, etc.). The next communication from the person making the public records request is service of a lawsuit alleging violations of the public records laws. Typically, these lawsuits are then followed by a request for settlement, demanding attorney’s fees and costs.

Various individuals and entities have filed thousands of public records requests and hundreds of lawsuits. Recently, a judge in Duval County denied a request for attorney’s fees in a public records lawsuit and called a plaintiff’s actions “a baiting gesture meant to achieve personal financial gain; not a legitimate request for public records” and “nothing more than a scam.” However, other judges around the state have opined that fees must be awarded until action is taken by the Legislature clarifying the issue.

These schemes are designed to do nothing more than raid the public treasury at the expense of taxpayers.

Examples of various issues with public records laws:

- Since 2013, the Town of Gulf Stream has received more than 1,500 public records requests and has been the subject of 42 different public records lawsuits. The town has expended over \$350,000 in litigation defense.
- Two related public- records seeking entities have filed more than 140 lawsuits in 27 counties within one year (against governmental entities and those having contracts with governmental

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entities).

- A public-records-seeking individual claims to have filed almost 200 lawsuits over a seven-year period.
- The Palm Beach State Attorney’s Office received more than 1,300 public records requests from the same several requestors.
- In the City of Cooper City, one individual has made approximately 600 public records requests in one year, requiring extensive time by the city attorney, city manager, city clerk and other managers to properly respond.
- City of Belleair Beach, Town of Greenwood, Town of Indialantic and numerous other municipalities have received public records requests for city personnel information from 2008-2013, specifically seeking name, position, mailing address, salary, etc., in a specified format.
- In the City of Oldsmar, a frequent public records requestor sends long emails and email strings containing public records requests “embedded” within the emails.
- The following governmental entities have been named as defendants in recent public records litigation (settlement amounts are noted):

Municipalities

Atlantis
Aventura
Baldwin
Boynton Beach (Police)
Cape Coral: \$12,500
Coral Gables (Police)
Cutler Bay: \$2,000
Dade City
Eagle Lake: \$10,000
Eustis (Police): \$1,500
Fernandina Beach: \$5,000
Florida City
Fort Myers
Fruitland Park
Greenacres
Gulf Stream
Hallandale Beach
Hialeah
Jacksonville Beach
Key Biscayne
Lake Park: \$4,000
Lakeland (Police)

Layton
Macclenny
Miami (3) (2-City; 1-Police)
Miami Beach (2)
Miami Lakes: \$2,000
Naples
New Port Richey
Orchid
Orlando (Fire)
Otter Creek
Palatka (Police)
Palm Coast
Pembroke Pines (2)
Pinecrest
Punta Gorda
Sarasota
Southwest Ranches (2)
St. Cloud
St. Petersburg (2)
Tampa (3) (2-City; 1-Police)
Venice: \$2,600
Zephyrhills (2)

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Counties

Clay
Collier
Highlands: \$9,000
Lake
Miami-Dade (4) (BOCC, Police, Water & Sewer Dept.)

Orange
Osceola (2) (County, Supervisor of Elections)
Palm Beach
Pasco
Pinellas
Volusia

School Boards

Broward
Charlotte
Clay
Duval
Flagler
Hardee
Hendry
Hillsborough
Lee

Manatee
Martin: \$20,000
Miami-Dade
Orange
Osceola
Polk (3)
St. Johns
St. Lucie

Sheriffs

Broward
Charlotte
Clay (2)
Flagler
Hardee
Hillsborough (2)
Lake
Lee
Manatee
Osceola
Palm Beach
Pasco (2)
Pinellas
St. Johns

Status:

CS/CS/SB 80 (Steube) requires the court to award reasonable costs of enforcement and attorney fees in a public record lawsuit if the city unlawfully refused to allow a record to be inspected or copied AND the complainant provided written notice to the city’s custodian of record five business days before filing the civil action. The notice provision only applies if the city has posted the contact information for the agency’s custodian of records in its primary administrative building where public records are usually created, maintained, and requested and on the city’s website. The bill allows the court to assess and award reasonable costs of enforcement and attorney fees against the complainant if the request or lawsuit was filed for an improper purpose. Finally, the bill clarifies that Chapter 119 does not create a private right of action authorizing the award of monetary damages for a person who bring an action to enforce the provisions of the public record law. Payments by the responsible

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agency may only include the reasonable cost of enforcement, including reasonable attorney fees, directly attributable to a civil action brought to enforce the public record law. CS/CS/SB 80 was amended on Third Reading in the Senate removing “to harass” from the definition of improper purpose. **CS/HB 163** (Burgess) was laid on the table by the full House and replaced by CS/CS/SB 80. CS/CS/SB 80 passed the full Senate unanimously (38-0) on March 29 and passed the full House on April 20. The bill now heads to the Governor for approval. (Cook)

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