

CHAPTER 2016-20

Committee Substitute for House Bill No. 273

An act relating to public records; amending s. 119.0701, F.S.; requiring a public agency contract for services to include a statement providing the contact information of the public agency's custodian of public records; prescribing the form of the statement; revising required provisions in a public agency contract for services regarding a contractor's compliance with public records laws; requiring a public records request relating to records for a public agency's contract for services to be made directly to the public agency; requiring a contractor to provide requested records to the public agency or allow inspection or copying of requested records under specified circumstances; providing penalties; specifying circumstances under which a court must award the reasonable costs of enforcement against a contractor; specifying what constitutes sufficient notice; providing that a contractor who takes certain actions is not liable for the reasonable costs of enforcement; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 119.0701, Florida Statutes, is amended to read:

119.0701 Contracts; public records; request for contractor records; civil action.—

(1) DEFINITIONS.—For purposes of this section, the term:

(a) “Contractor” means an individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency as provided under s. 119.011(2).

(b) “Public agency” means a state, county, district, authority, or municipal officer, or department, division, board, bureau, commission, or other separate unit of government created or established by law.

(2) CONTRACT REQUIREMENTS.—In addition to other contract requirements provided by law, each public agency contract for services entered into or amended on or after July 1, 2016, must include:

(a) The following statement, in substantially the following form, identifying the contact information of the public agency's custodian of public records in at least 14-point boldfaced type:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT ... (telephone number, e-mail address, and mailing address)....

(b) A provision that requires the contractor to comply with public records laws, specifically to:

~~1.(a) Keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service.~~

~~2.(b) Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the access to public records to be inspected or copied within a reasonable time on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.~~

~~3.(e) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the contractor does not transfer the records to the public agency.~~

~~4.(d) Upon completion of the contract, Meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the contractor or keep and maintain public records required by the public agency to perform the service. If the contractor transfers all public records to the public agency upon completion of the contract, the contractor shall upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the contractor keeps and maintains public records upon completion of the contract, the contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.~~

(3) REQUEST FOR RECORDS; NONCOMPLIANCE.—

(a) A request to inspect or copy public records relating to a public agency's contract for services must be made directly to the public agency. If the public agency does not possess the requested records, the public agency shall immediately notify the contractor of the request, and the contractor must provide the records to the public agency or allow the records to be inspected or copied within a reasonable time.

~~(b)(3) If a contractor does not comply with the a public agency's records request for records, the public agency shall enforce the contract provisions in accordance with the contract.~~

(c) A contractor who fails to provide the public records to the public agency within a reasonable time may be subject to penalties under s. 119.10.

(4) CIVIL ACTION.—

(a) If a civil action is filed against a contractor to compel production of public records relating to a public agency’s contract for services, the court shall assess and award against the contractor the reasonable costs of enforcement, including reasonable attorney fees, if:

1. The court determines that the contractor unlawfully refused to comply with the public records request within a reasonable time; and

2. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the contractor has not complied with the request, to the public agency and to the contractor.

(b) A notice complies with subparagraph (a)2. if it is sent to the public agency’s custodian of public records and to the contractor at the contractor’s address listed on its contract with the public agency or to the contractor’s registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.

(c) A contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor March 8, 2016.

Filed in Office Secretary of State March 8, 2016.