

CHAPTER 2017-21

Committee Substitute for Committee Substitute for Senate Bill No. 80

An act relating to public records; amending s. 119.12, F.S.; revising the circumstances under which a court must assess and award the reasonable costs of enforcement against an agency in a civil action to enforce ch. 119, F.S.; specifying circumstances under which a complainant is not required to provide certain written notice of a public records request; requiring a court to determine whether a complainant requested to inspect or copy a public record or participated in a civil action for an improper purpose; prohibiting the assessment and award of the reasonable costs of enforcement to a complainant who acted with an improper purpose; requiring the court to assess and award reasonable costs against the complainant if he or she is found to have acted with an improper purpose; defining the term “improper purpose”; providing for construction and applicability; providing an effective date.

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

Section 1. Section 119.12, Florida Statutes, is amended to read:

119.12 Attorney ~~Attorney's~~ fees.—

(1) ~~If a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that such agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award, against the agency responsible, the reasonable costs of enforcement, including reasonable attorney attorneys' fees, against the responsible agency if the court determines that:~~

(a) The agency unlawfully refused to permit a public record to be inspected or copied; and

(b) 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, except as provided under subsection (2). The notice period begins on the day the written notice of the request is received by the custodian of public records, excluding Saturday, Sunday, and legal holidays, and runs until 5 business days have elapsed.

(2) The complainant is not required to provide written notice of the public record request to the agency's custodian of public records as provided in paragraph (1)(b) 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.

(3) The court shall determine whether the complainant requested to inspect or copy a public record or participated in the civil action for an improper purpose. If the court determines there was an improper purpose, the court may not assess and award the reasonable costs of enforcement, including reasonable attorney fees, to the complainant, and shall assess and 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. For purposes of this subsection, the term "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 this chapter or for a frivolous purpose.

(4) This section 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 this chapter. 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 this chapter.

Section 2. This act applies only to public records requests made on or after the effective date of this act.

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor May 23, 2017.

Filed in Office Secretary of State May 23, 2017.