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23 December 2015

The Honorable Rene Garcia  
The Florida Senate  
310 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Re: SB 1220, Public Records/Attorney Fees

Dear Senator Garcia:

We are writing to express our opposition to your bill, SB 1220, amending the attorney fee provision in s. 119.12, F.S., to make the award of reasonable attorney fees and costs permissive rather than mandatory in lawsuits seeking access to public records. It is our position that this change effectively eviscerates Florida's constitutional right of access to public records and we ask that you withdraw the bill from consideration.

Florida has a reputation for having the strongest open government laws in the nation, but a recent report issued by the Center for Public Integrity gave us a D-. According to the report, "The problem is not with the laws that make documents public, but the laws that deal with non-compliance."

<http://www.publicintegrity.org/2015/11/09/18362/florida-gets-d-grade-2015-state-integrity-investigation>

Put another way, there is no enforcement mechanism in Florida's public records law, forcing an aggrieved citizen to file suit in civil court to guarantee compliance with the constitutional right of access to public records. This in itself is a significant barrier for most citizens who simply want access to the public records they are entitled to receive. Senate Bill 1220, by changing the attorney fee provision from mandatory to permissive, makes that barrier insurmountable, eroding citizens' ability to oversee their government and hold it accountable for its actions.

From public statements that have been made, SB 1220 is intended to stop a handful of people who are making public record requests for the sole purpose of tripping up a government agency, allowing the requestor to file a lawsuit and receive attorney fees if the suit is successful. This is a small group of people, Senator, particularly when compared to the vast majority of citizens who simply want access to the public records they seek. In effect, your bill punishes them because of the misdeeds of a small minority. In doing so, SB 1220 offends our constitution – what good is a right without an effective remedy?

The better course of action, we believe, is to create an enforcement mechanism, a public office or officer responsible for overseeing compliance with our public records law. If requesting intervention by this office were a mandatory step before filing a civil suit, you would shut down those misusing the law while assisting both public record requestors and the custodians of those records. Ultimately, this could be a cost effective way to enhance public access. There are a number of states with similar programs in place and we would be happy to provide you with information about those programs.

Thank you for your attention to our concerns, Senator.

Sincerely,

Barbara A. Petersen, President

Cc: The Honorable Andy Gardiner, President, The Florida Senate  
The Honorable Arthenia Joyner, Minority Leader, The Florida Senate  
Jon Kaney, General Counsel, First Amendment Foundation  
Samuel Morley, General Counsel, Florida Press Association  
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