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Hon. Greg Steube  
The Florida House of Representatives  
402 South Monroe Street, 204 HOB  
Tallahassee, Fl. 32399-1300

Re: HB 1021 Public Records/ Attorney Fees

Dear Representative Steube:

The issue is not that the agencies are required to pay citizens' attorney fees by failing to disclose public records. The problem is that agencies pay attorneys to defend litigation in which those very same attorneys failed to advise the public record disclosure that resulted in the fees being assessed.

It is only if the legal advice to the agency is incorrect that the agency is required to pay attorney fees. Why should agency attorneys who provide incorrect legal advice collect fees if the citizen, whose right to the documents has been confirmed by the court, is not reimbursed for his? At the very least, attorney fees paid to a citizen whose public records request was improperly denied, should be paid by agency attorneys from fees collected from the agency in defending their own advice. In that case there would be no additional legal costs assessed to the agency or the public.

The proposed solution simply ignores the elephant in the room. Determining whether it is proper to withhold records is not difficult to get right. Most agency attorneys are certified by The Florida Bar in City, County and Local Government Law.

The City of St. Pete Beach was recently involved in two open government cases. The city relied on the advice of Bryant Miller Olive which claimed significant expertise in the area of open government. Bryant Miller Olive was paid almost \$1 million in legal fees by the taxpayers to defend the firm's legal advice. After extensive (and expensive) litigation, in both cases the appellate court ordered the City to pay attorney fees to the successful citizens.

In Venice, agency attorneys were paid \$1.7 million to defend (and lose) a public records case, yet, in addition, the city was required to pay the successful citizen's attorneys fees.

Both agency law firms kept their fees. Does that make equitable or fiscal sense?

Alternatively, if the committee decides to modify the statute to provide that successful citizens' legal fees should be discretionary by changing "shall" to "may", then it should require that agency attorneys refund their fees to the agency if a successful citizen is denied attorney fees by the court. Correct that obviously inequitable situation and I guarantee, the problem will solve itself.

A more practical solution would be to add a few days' notice to the agency prior to the filing of litigation. That should amply cover the risk of incurring attorney fees if an agency or contractor inadvertently failed to comply with a valid request. Isn't that the reason League of Cities brought this bill to the Legislature in the first place?

Respectfully,

Kenneth L. Weiss

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