



**First Amendment Foundation**  
Protecting Your Right to Know for 30 Years!

March 7, 2017

**BOARD OF TRUSTEES**

**DAVE WILSON, CHAIRMAN**

Senior Editor, *The Miami Herald*

**BOB SHAW, VICE CHAIRMAN**

Retired Editor

**MIKE VASILINDA, SECRETARY  
& TREASURER**

President, Capitol News Service

**JON KANEY, GENERAL COUNSEL**

Kaney & Olivari

**Skip Foster**

President & Publisher, Tallahassee

Media Group

**JIM BALTZELLE**

Director of Regional Media, Southeast

The Associated Press

**DICK BATCHELOR**

Founder and President

Dick Batchelor Management Group, Inc.

**MIKE DEESON**

Senior Reporter, WTSP-TV

**FRANK DENTON**

Editor, *Florida Times-Union*

**GARY GREEN**

Deputy News Editor and Digital Director

Innovation News Center

**CAROL JEAN LOCICERO**

Thomas & LoCicero

**SAMUEL J. MORLEY**

General Counsel, Florida Press

Association

**TIM NICKENS**

Editor of Editorials, *Tampa Bay Times*

**PATRICK RICE**

Editor, *Daytona Beach News-Journal*

**DEAN RIDINGS**

President & CEO, Intersect Media

Solutions

**APRIL SALTER**

President & Chief Operating Officer

Salter Mitchell

**PETE WEITZEL**

Director Emeritus

**CHARLEY WILLIAMS**

Past Statewide Voter Services Chair

League of Women Voters

Business Development Director

Geotechnical and Environmental

Consultants, Inc.

The Honorable Greg Steube  
The Florida Senate  
326 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Re: CS/SB 80, Public Records - Attorney Fees

Dear Senator Steube:

We would like to thank you for responding to our concerns regarding SB 80. Unfortunately, we can't support the amendment adopted yesterday, worried that the preponderance of evidence requirement necessary to win an award of attorney fees is an undue burden on the citizen seeking to enforce the constitutional right of access through the courts. As we've noted many times, the only enforcement mechanism available to those who are seeking public records is litigation, and to make the attorney fee award permissive effectively eviscerates that sole route.

In response to the comments in committee yesterday, we've taken the liberty of drafting an amendment that requires an award of attorney fees *if* the court finds the agency violated the law *and* the complainant provides written notice of the request to the agency's custodian of records five business days prior to filing suit. The amendment also clarifies that damages aren't allowed and limits an award for the cost of enforcement to reasonable attorney fees and costs directly attributable to the enforcement action. This amendment will, we believe, protect agencies from predatory public record requests and, at the same time, preserve a citizen's only effective remedy for a violation of the constitutional right of access.

Thank you for your attention to our concerns, Senator. We look forward to your response.

Sincerely,

  
Barbara A. Petersen, President

Cc: The Honorable Joe Negron, President, The Florida Senate  
The Honorable Jeff Clemens, The Florida Senate  
The Honorable David Simmons, The Florida Senate

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

(1) If a civil action is filed against an agency to enforce the provisions of this chapter and it 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 computation of time begins on the day the written notice of the request is received by the custodian of public records, counting every day, but excluding weekends and legal holidays, until five 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) Nothing in this chapter creates a private right of action for money damages for any person who brings an action to enforce the provisions of this act. Payments by the responsible agency shall include only those reasonable costs of enforcement, including reasonable attorney fees, directly attributable to litigation brought to enforce the provisions of this act.