

DEERFIELD BEACH HOUSING AUTHORITY

MEMORANDUM NO 2017-002

TO: Dr. Nadine M. Jarmon, Executive Director

FROM: David N. Tolces, General Counsel *DNT*
Shana H. Bridgeman, Assistant General Counsel *SHB*

DATE: May 26, 2017

RE: Deerfield Beach Housing Authority (“DBHA”) /
Senate Bill 80 – Public Records Lawsuit Notice Requirement

Attached for your review is Senate Bill 80, an amendment to Section 119.12, Florida Statutes, which governs Public Records. On May 23, 2017, Senate Bill 80, which is now an Act, was signed by the Governor and is now effective, upon becoming law.

The Act modifies the circumstances under which a complainant may obtain attorney fees arising from a public records lawsuit and allows public entities additional time to produce public records prior to being sued. To determine whether or not to award attorney fees, the court will now consider whether the public records request was made “for a frivolous purpose.”

A court may assess attorney fees against the responsible public entity if the court determines that the agency unlawfully refused to permit a public record to be inspected or copied and the complainant provided a **written notice** of the public record request at least **5 business days before** filing the lawsuit. The notice period begins on the day the written notice of the request is received by the public entity’s records custodian, excluding Saturday, Sunday, and legal holidays, and runs until 5 business days have elapsed.

In order to receive the protections provided by the Act, you are required to “prominently post” the contact information for the custodian of public records (1) in the “primary administrative building in which public records are routinely created, sent, received, maintained, and requested”, and (2) on your website.

Our office has drafted the following suggested notice:

ACCESS TO PUBLIC RECORDS

**If you wish to submit a request to inspect or copy public records,
the Deerfield Beach Housing Authority's Custodian of Public Records is:**

_____[NAME]_____
_____[ADDRESS]_____
_____[TELEPHONE]_____
_____[E-MAIL ADDRESS]_____

**This notice is posted pursuant to Fla. Stat. §119.12 and any and all other applicable local,
State, and Federal laws.**

We are available to review any additional language you may wish to include such postings.
Should you have any questions or concerns, please do not hesitate to contact us.

DNT:SHB/msd
Encl.

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2 An act relating to public records; amending s. 119.12,
3 F.S.; revising the circumstances under which a court
4 must assess and award the reasonable costs of
5 enforcement against an agency in a civil action to
6 enforce ch. 119, F.S.; specifying circumstances under
7 which a complainant is not required to provide certain
8 written notice of a public records request; requiring
9 a court to determine whether a complainant requested
10 to inspect or copy a public record or participated in
11 a civil action for an improper purpose; prohibiting
12 the assessment and award of the reasonable costs of
13 enforcement to a complainant who acted with an
14 improper purpose; requiring the court to assess and
15 award reasonable costs against the complainant if he
16 or she is found to have acted with an improper
17 purpose; defining the term "improper purpose";
18 providing for construction and applicability;
19 providing an effective date.
20

21 Be It Enacted by the Legislature of the State of Florida:
22

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

25 119.12 Attorney ~~Attorney's~~ fees.—

26 (1) If a civil action is filed against an agency to enforce
27 the provisions of this chapter ~~and if the court determines that~~
28 ~~such agency unlawfully refused to permit a public record to be~~
29 ~~inspected or copied~~, the court shall assess and award, ~~against~~

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30 ~~the agency responsible,~~ the reasonable costs of enforcement,
31 including reasonable attorney attorneys' fees, against the
32 responsible agency if the court determines that:

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

35 (b) The complainant provided written notice identifying the
36 public record request to the agency's custodian of public
37 records at least 5 business days before filing the civil action,
38 except as provided under subsection (2). The notice period
39 begins on the day the written notice of the request is received
40 by the custodian of public records, excluding Saturday, Sunday,
41 and legal holidays, and runs until 5 business days have elapsed.

42 (2) The complainant is not required to provide written
43 notice of the public record request to the agency's custodian of
44 public records as provided in paragraph (1)(b) if the agency
45 does not prominently post the contact information for the
46 agency's custodian of public records in the agency's primary
47 administrative building in which public records are routinely
48 created, sent, received, maintained, and requested and on the
49 agency's website, if the agency has a website.

50 (3) The court shall determine whether the complainant
51 requested to inspect or copy a public record or participated in
52 the civil action for an improper purpose. If the court
53 determines there was an improper purpose, the court may not
54 assess and award the reasonable costs of enforcement, including
55 reasonable attorney fees, to the complainant, and shall assess
56 and award against the complainant and to the agency the
57 reasonable costs, including reasonable attorney fees, incurred
58 by the agency in responding to the civil action. For purposes of

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59 this subsection, the term "improper purpose" means a request to
60 inspect or copy a public record or to participate in the civil
61 action primarily to cause a violation of this chapter or for a
62 frivolous purpose.

63 (4) This section does not create a private right of action
64 authorizing the award of monetary damages for a person who
65 brings an action to enforce the provisions of this chapter.
66 Payments by the responsible agency may include only the
67 reasonable costs of enforcement, including reasonable attorney
68 fees, directly attributable to a civil action brought to enforce
69 the provisions of this chapter.

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

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