

# Florida Public Records Law and Government Contractors 2016 Legislature Makes Significant Changes

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**Martha H. Chumbler**



Chapter 119, Florida Statutes (“the Act”), requires that every “agency” make its records available for inspection and copying to any member of the public who makes a request. Either refusal to provide such access or an unreasonable delay in doing so within a reasonable period of time will subject the agency to an assessment of costs and attorneys’ fees if the person making the request goes to court to enforce their access right. While the Act is primarily intended to provide transparency in government, its use of the word “agency” does not limit its application to government entities. Rather, any public—or even private—individual or entity acting on behalf of a government entity is also subject to the Act’s requirements. Thus, anyone seeking records relating to a government contractor’s performance of services for a state or local government agency could—until now—make that request directly to the government contractor. If the government contractor refused or took an unreasonable amount of time to respond, suit could be brought directly against the contractor.

That right to demand records directly from the government contractor no longer exists. Newly enacted 2016-20, Laws of Florida, (CS/HB 273) requires that all requests for records relating to a government contract for services must be made to the government agency, not the contractor. If the government agency does not have copies, it must then notify the contractor of the request and the contractor can supply the requested copies via the public agency or directly to the person making the request.

In addition, while the new law makes it explicit that government contractors can be assessed costs and attorneys’ fees for failure to provide timely access, it establishes a new condition precedent to such an award. The party seeking the records must give both the government agency and the contractor at least eight business days’ notice before filing suit. That notice must be provided to the government agency’s designated public records custodian and to either the contractor’s registered agent or the contact person for the contractor identified in the contract itself. Notice must be delivered by common carrier or by registered or certified mail.

If the requisite eight-day notice is not provided or the contractor provides access to the requested records within eight days after receiving notice, costs and fees cannot be assessed.

2016-20 was signed by the Governor on March 8, 2016, and took effect immediately.

Also significant to government contractors, and all others who must supply financial information to government entities, two new acts 2016-5 (CS/SB 180) and 2016-6 (CS/CS/SB 182) , now make it clear that the term “trade secret” includes financial

information. Trade secret information contained in public records cannot be disclosed. Before a record containing such a trade secret is made available to any member of the public, all trade secret information must be redacted. As in the past, however, the information must be clearly identified to the government agency as trade secret before being submitted, or the right to claim trade secret protection is likely waived.

2016-5 and 2016-6 take effect October 1, 2016.

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