

FL Supreme Court rules agencies must pay attorney's fees when violating public records law

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The Florida Supreme Court on Thursday issued a broadly worded ruling that made clear public agencies are liable for paying attorney's fees if they violate the state's open-records law.

The 5-2 ruling dealt with cases in which people successfully sue agencies for failing to comply with the records law. Justices rejected arguments that agencies should be shielded from paying plaintiffs' legal fees if public-records requests are handled in "good faith."

"In accordance with case law liberally construing the Public Records Act in favor of open access to public records, the reasonable statutory construction of the attorney's fee provision, and the letter and spirit of the constitutional right to inspect or copy public records, we hold that a prevailing party is entitled to statutory attorney's fees under the Public Records Act when the trial court finds that the public agency violated a provision of the Public Records Act in failing to permit a public record to be inspected or copied," said the majority opinion, written by Justice **Barbara Pariente** and joined by Chief Justice **Jorge Labarga** and justices **R. Fred Lewis**, **Peggy Quince** and **James E.C. Perry**. "There is no additional requirement, before awarding attorney's fees under the Public Records Act, that the trial court find that the public agency did not act in good faith, acted in bad faith, or acted unreasonably."

The ruling, which stemmed from a dispute about records requested from the Board of Trustees of the Jacksonville Police and Fire Pension Fund, came after lawmakers this year considered a proposal that would have given more discretion to judges in deciding whether to award attorney's fees in public-records cases. The proposal, backed by groups such as the Florida League of Cities, ultimately did not pass.

In a dissent to Thursday's ruling, Justice **Charles Canady** wrote that agencies should not be forced to pay attorney's fees when they act in good faith.

"Where the custodian of public records has acted in good faith, the custodian has not manifested 'a positive unwillingness' to comply with the Public Records Act," Canady wrote in the dissent, which was joined by Justice **Ricky Polston**. "In such circumstances, an unlawful refusal to comply with the law has not occurred and the attorney's fee provision is not applicable."

The case was filed by **Curtis W. Lee**, who requested public records from the Jacksonville pension fund in 2009, according to a brief filed in the Supreme Court by the fund. A dispute about the request resulted in a circuit judge ruling in 2011 that the pension fund had violated the

public-records law. The ruling dealt with conditions that the fund set about Lee paying for agency staff time.

Lee then filed a motion to recover attorney's fees, which was rejected by a circuit judge. The 1st District Court of Appeal, however, sided with Lee, which prompted the pension fund to take the issue to the Supreme Court.

The legislative debate this year primarily focused on public-records lawsuits that local governments allege are filed simply as vehicles to generate attorney's fees. But groups such as the First Amendment Foundation argue that giving judges more discretion in awarding fees would dramatically weaken the state's public-records law because many people cannot afford to hire attorneys without the possibility of recouping legal costs.

(Disclosure: The News Service of Florida is a member of the First Amendment Foundation.)

In the ruling Thursday, Pariente wrote that the purpose of state law is "frustrated if the prevailing individual must incur the attorney's fees --- rather than the public agency that violated the Public Records Act --- merely because the individual is unable to establish that the public agency acted unreasonably or in bad faith."

"Even if not malicious or done in bad faith, the pension fund's actions --- which were found to be unlawful --- had the effect of frustrating Lee's constitutional right to access public records and required him to turn to the courts to vindicate that right," Pariente wrote. "Reasonable attorney's fees should have been awarded ... for the pension fund's violation of the Public Records Act."

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