

The Legislature enacted a revision to the Public Records Law. The new law, which was signed into law by Governor Scott on May 23, 2017 and became immediately effective that same day, provides that an award of attorney's fees to a prevailing plaintiff in public records cases should only be assessed where 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[.]" Additionally, where a court determines that the complainant requested the public record "for an improper purpose," the claimant is not entitled to an award of fees but rather the agency is entitled to recover its fees from the complainant. "Improper purpose" is defined as a public records request made "primarily to cause a violation [of the Public Records Law] or for a frivolous purpose."

Significantly, the 5-day advance notice requirement is inapplicable if the agency fails to "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." Accordingly, to take advantage of the new law, it is imperative that public agencies take immediate action to post the contact information for its records custodian at its facilities and on its website. Once those steps are taken, in the event the custodian receives written notice public agencies would be well served to take all necessary steps to ensure compliance with the request as an added measure to insulate itself from liability for an award of fees and costs should a public records lawsuit be filed.