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## **Attorney's Fees Under Florida's Public Records Act: Taking Intent Out of the Equation.**

In a move towards strict liability, a recent Florida Supreme Court holding allows no room for public agency error under Florida's Public Records Act ("Act"). On April 14, 2016, the Supreme Court of Florida issued an opinion in *Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee*, and held that a party is entitled to attorney's fees under the Act when a public agency unlawfully refuses access to public records, regardless of a public agency's reasonable or good faith mistake in refusing to produce the requested records.

The Florida Constitution provides individuals with the "right to inspect or copy any public record . . ." The Act codifies this constitutional mandate and incentivizes compliance by allowing for a prevailing party in a civil action to recover attorney's fees when an "agency unlawfully refuse[s] to permit a public record to be inspected or copied."

The Board of Trustees case originated in late 2009 after Curtis W. Lee ("Lee") requested a series of public records from the Board of Trustees of the Jacksonville Police & Fire Pension Fund ("Pension Fund"). Following Lee's requests, disputes arose around the Pension Fund's prerequisites to public record access. Lee sought relief from the Circuit Court alleging the Pension Fund's prerequisites violated the Act. The Circuit Court ruled the Pension Fund violated the Act and the First District Court of Appeal later affirmed the Circuit Court's ruling.

Following this favorable ruling, Lee moved for attorney's fees against the Pension Fund. The Circuit Court denied Lee's request stating the Pension Fund's Act violations were not "knowing, willful or done with a malicious intent." Upon Lee's appeal, the First District Court of Appeal ("DCA") reversed the Circuit Court's decision. Articulating that, regardless of intent, attorney's fees must be awarded once a court determines an agency unlawfully violated the Act.

The First DCA's holding aligned with the Second DCA which previously held there was no "good faith" or "honest mistake" exceptions when a public agency violates the Act. To the contrary, the Third, Fourth, and Fifth DCAs have held that attorney's fees are not warranted under the Act when a public agency was acting reasonably or made a good faith mistake. Recognizing this conflict among the DCAs, the Florida Supreme Court accepted review of the Board of Trustees case.

The Florida Supreme Court, in accordance with the First and Second DCAs, held that the right to attorney's fees under the Act is predicated on a public agency's unlawful refusal to provide access to public records regardless of the agency's good intentions. The Court examined the Act's legislative history and noted the Legislature had "multiple opportunities to explicitly require a 'good faith' standard" in the Act's attorney's fees section and chose otherwise. In fact, prior to 1984, access to attorney's fees required a showing that an agency "unreasonably refused" access to a requesting party. However, in 1984, the Legislature changed the phrase "unreasonably refused" to "unlawfully refused," signifying a change in Legislative intent towards strict liability.

For public agencies around the State of Florida, the Board of Trustees case may be costly precedent.

Unfortunately for public agencies, this case allows no room for missteps. In order to avoid paying attorney's fees, public agencies will need extensive training on recognizing public records, processing public record requests, and complying with requests in a timely manner. If a public agency fails to comply with a records request, the agency can expect to pay for their mistake ... intentional or accidental.

Article by Leonard J. Dietzen, III and Lindy K. Keown

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**Rumberger, Kirk & Caldwell, P.A.**

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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