

2018 Regular Session

HOUSE BILL NO. 723 (Substitute for House Bill No. 123 by Representative Garofalo)

BY REPRESENTATIVE GAROFALO

PUBLIC RECORDS: Provides for the award of attorney fees to a person making a public records request when the person prevails or prevails in part in a suit instituted by a public body or official

1 AN ACT

2 To amend and reenact R.S. 44:35(D), relative to public records; to provide relative to suits
3 brought pursuant to the provisions of the Public Records Law; to provide for the
4 award of attorneys fees in such a suit to a person who has made a public records
5 request under certain circumstances; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 44:35(D) is hereby amended and reenacted to read as follows:

8 §35. Enforcement

9 * * *

10 D.(1) If a person seeking the right to inspect, copy, or reproduce a record or
11 to receive or obtain a copy or reproduction of a public record prevails in such suit,
12 he shall be awarded reasonable attorney fees and other costs of litigation. If such
13 person prevails in part, the court may in its discretion award him reasonable attorney
14 fees or an appropriate portion thereof.

15 (2) If a public body or official brings a suit against a person based on the
16 person's request to inspect, copy, or reproduce a record or to receive or obtain a copy
17 or reproduction of a public record and the person prevails in the suit, the person shall
18 be awarded reasonable attorney fees and other costs of litigation. If the person

1 prevails in part, the court may in its discretion award the person reasonable attorney
2 fees or an appropriate portion thereof.

3 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 723 Original

2018 Regular Session

Garofalo

Abstract: Provides for the award of attorney fees to a person making a public records request when the person prevails or prevails in part in a suit instituted by the custodian or agency of the custodian.

Present law establishes the right of any person to examine a public record and authorizes individuals who appear in person to inspect, copy, or reproduce any public record and further authorizes a person to obtain a copy or reproduction of any public record. Provides that a person who has been denied the right to inspect or copy a record may institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief, together with attorney fees, costs, and damages, in the district court for the parish in which the office of the custodian of the record is located. Specifies that the right to institute an enforcement action applies to: (1) all written, electronic, and in person requests; (2) the denial of the right to inspect or copy a record; and (3) the denial of the right to obtain a copy or reproduction of a record. Provides that a person may institute an enforcement action when the person is denied access to a record either by a determination of the custodian, or by the passage of five days, exclusive of Saturdays, Sundays, and legal public holidays, from the date of his request without receiving a determination in writing from the custodian or an estimate of the time reasonably necessary for collection, segregation, redaction, examination, or review of the request.

Present law provides that if a person seeking the right to inspect, copy, or reproduce a record or to receive or obtain a copy or reproduction of a public record prevails in such suit, he shall be awarded reasonable attorney fees and other costs of litigation. Provides that if such person prevails in part, the court may in its discretion award him reasonable attorney fees or an appropriate portion thereof. Provides that an award for attorney fees shall not exceed the amounts approved by the attorney general for the employment of outside counsel. Present law further authorizes the court to award the requester civil penalties not to exceed \$100 per day, exclusive of Saturdays, Sundays, and legal public holidays, if the court finds that the custodian unreasonably or arbitrarily failed to respond to the request as required by present law.

Proposed law retains present law. Additionally, provides that if a public body or official brings a suit against a person based on the person's request to inspect, copy, or reproduce a record or to receive or obtain a copy or reproduction of a public record and the person prevails in the suit, the person shall be awarded reasonable attorney fees and other costs of litigation. Provides that if the person prevails in part, the court may in its discretion award the person reasonable attorney fees or an appropriate portion thereof.

(Amends R.S. 44:35(D))