

CLIENT ALERT

Changes to Public Records Act Reshape Duties of Government Contractors

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Recent amendments to Florida's Public Records Act both clarify and alter a contractor's responsibilities under the Act. The 2016 amendment to the Act applies to contracts with a public agency entered into or amended on or after July 1, 2016. A related amendment made to the Florida Statutes definition of a trade secret became effective on October 1, 2016. The recent changes include:

MEMBERS OF THE PUBLIC MUST NOW REQUEST RECORDS FROM AGENCIES, NOT CONTRACTORS

Before the latest amendments, government contractors were required to provide the public with access to public records exactly as an agency would. Now, public records requests must be made to the public agency directly. If the agency does not have a copy of the records, the agency must then request the records from the contractor. A contractor who does not provide the records within a timely manner could be subject to penalties for violating public records laws.

CONTRACTOR'S MAINTENANCE OF RECORDS

Previously, contractors were required to provide the public agency with all public records once the contract ended. Now, once a government contract ends, contractors must either transfer all public records to the agency, or keep and maintain public records required by the public agency to perform the service.

If a contractor chooses to transfer all of the records to the agency, the contractor must destroy any copies of those records. Alternatively, if a contractor chooses to maintain the records, the contractor

must meet all applicable requirements for maintaining public records, such as where the records are to be maintained. The contractor must also maintain the confidentiality of any information that is exempt from disclosure under the Act.

FINANCIAL INFORMATION MAY NOW BE A TRADE SECRET

In January, the Florida legislature amended the statutory definition of a trade secret to include "financial information." The amendment clarifies that the financial information provided to governmental entities, by contractors and companies alike, may now be considered a trade secret that is exempt from disclosure under the Act, provided that the information meets the other elements of a trade secret according to the statute.

ATTORNEY'S FEES FOR CONTRACTOR NONCOMPLIANCE

The amendment to the statute also includes a provision that specifically addresses civil actions against contractors who do not comply with the Act. According to the amendment, attorney's fees will be awarded when a contractor unlawfully refuses to comply with a public records request from an agency, but only if the requestor provides written notice of the public records request to the public agency and contractor at least eight business days before filing the action. The written notice must include the fact that the contractor did not comply with the records request. If a contractor complies with the request within the eight days, the contractor is not liable for costs of enforcement.

Previous statutes did not address who would be responsible to pay attorney's fees when a contractor did not comply with the public records request.

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