

2024 Regular Session

HOUSE BILL NO. 768

BY REPRESENTATIVE FARNUM

PUBLIC RECORDS: Provides relative to custodian liability for public records requests

1 AN ACT

2 To amend and reenact R.S. 44:35(E), relative to the Public Records Law; to provide relative
3 to enforcement proceedings; to eliminate the personal liability of the custodian; and
4 to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

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

7 §35. Enforcement

8 * * *

9 E.~~(1)~~ If the court finds that the custodian arbitrarily or capriciously withheld
10 the requested record or unreasonably or arbitrarily failed to respond to the request
11 as required by R.S. 44:32, it may award the requestor any actual damages proven by
12 him to have resulted from the actions of the custodian except as hereinafter provided.
13 In addition, if the court finds that the custodian unreasonably or arbitrarily failed to
14 respond to the request as required by R.S. 44:32 it may award the requestor civil
15 penalties not to exceed one hundred dollars per day, exclusive of Saturdays,
16 Sundays, and legal public holidays for each such day of such failure to give
17 notification.

18 ~~(2) The custodian shall be personally liable for the payment of damages~~
19 ~~pursuant to Paragraph (1) of this Subsection and shall be liable in solido with the~~
20 ~~public body for the payment of the requestor's attorney fees and other costs of~~

1 ~~litigation, except where the custodian has withheld or denied production of the~~
 2 ~~requested record or records on advice of the legal counsel representing the public~~
 3 ~~body in which the office of such custodian is located, and in the event the custodian~~
 4 ~~retains private legal counsel for his defense or for bringing suit against the requestor~~
 5 ~~in connection with the request for records, the court may award attorney fees to the~~
 6 ~~custodian.~~

7 * * *

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 768 Original

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Farnum

Abstract: Repeals the custodian's personal liability for the payment of damages for arbitrary and capricious withholding of public records or failure to respond to a public records request.

Present law provides that any person who has been denied the right to inspect, copy, reproduce, or obtain a copy or reproduction of a record pursuant to the Public Records Law may institute proceedings for the issuance of a writ of mandamus, injunctive or declaratory relief, together with attorney fees, costs and damages.

Present law provides that a person who prevails in such suit seeking public records shall be awarded reasonable attorney fees and other costs of litigation.

Present law provides that if the court finds that the custodian arbitrarily or capriciously withheld the requested record it may award the requestor any actual damages. If the court finds that the custodian unreasonably or arbitrarily failed to respond to the request, it may award the requestor any actual damages in addition to civil penalties not to exceed \$100 per day for each day of failure to give notification.

Proposed law retains present law.

Present law provides that the custodian shall be personally liable for the payment of damages for arbitrary and capricious withholding of records or failure to respond to a request. Provides that the custodian shall be liable in solido with the public body for the payment of the requestor's attorney fees and other costs of litigation, except where the custodian has withheld or denied production of the requested record or records on advice of legal counsel representing the public body. In the event the custodian retains private legal counsel for his defense or for bringing suit against the requestor in connection with the request for records, the court may award attorney fees to the custodian.

Proposed law repeals present law.

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