



ELECTRONIC FRONTIER FOUNDATION
Protecting Rights and Promoting Freedom on the Electronic Frontier

February 17, 2016

VIA EMAIL

Senator Rene Garcia
310 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100
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Representative Greg Steube
204 House Office Building
402 South Monroe Street
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greg.steube@myfloridahouse.gov

Dear Sen. Garcia and Rep. Steube,

I am writing today as a representative of the Electronic Frontier Foundation (EFF) to express our opposition to S.B. 1220 and H.B. 1021.

EFF is a non-profit advocacy and legal organization that specializes in defending free speech, privacy, and transparency in the digital world. We have 26,000 members worldwide, including more than 500 members in Florida.

In the transparency community, Florida's Sunshine Law is revered as a model. In fact, Florida's public records laws helped inspire the *Boston Globe's* historic investigation into the Catholic Church sex abuse scandal, which is the subject of the film *Spotlight*. Lead investigative editor Walter Robinson, in an interview with the host of the WNYC radio program *On the Media*, said of editor Marty Baron:

"You know, he came from Miami and Florida has the best public records law in the country, and he came to Massachusetts which has among the worst, government is not accessible at all, we consider ourselves to be the Mississippi of public records."

Baron's experience at the *Miami Herald* accessing records, according to Robinson, informed the *Globe's* decision to go to court to unseal crucial records that ultimately exposed a global scandal.

Florida should be proud to be the best in the nation in protecting the public's right to know. Unfortunately, S.B. 1220 and H.B. 1021 would significantly weaken this law and the public's ability to hold their public officials accountable. It is now up to you decide whether Florida should continue to live up to its name as the Sunshine State.

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These bills would remove the guarantee that a plaintiff in a public records case can collect attorney's fees and costs when a court finds that an agency inappropriately withheld records. Specifically, the legislation would make attorneys fees and costs discretionary rather than mandatory, which is currently the law when a plaintiff prevails. This will have an immediate chilling effect.

These bills would create a regime in which journalists, academic researchers, non-profit advocates, and other members of the public who believe they have been wrongly denied access to government records would have to take an enormous gamble: risk being stuck with large legal fees even if they are victorious.

Under such a regime, government officials might see a strategic advantage in withholding records, banking on the requester's inability to take such a financial risk. In cases where a plaintiff decides to file a lawsuit, agencies may see further strategic advantage in dragging out a case to create financial pressure on the plaintiff. After all, few members of the public have the same financial resources as the government.

Proponents of the legislation argue that the law costs too much. But this does not take into account the amount of money saved when the public uses records to uncover wasteful spending, nor does it consider the efficiency that emerges when agencies know that their work and decisions will come under public scrutiny. Providing a successful public records plaintiff with legal fees is one way that the government funds its own independent oversight.

We urge you to withdraw the legislation, and we do intend to engage our members to ask their elected representatives to vote "NO" on S.B. 1220 and H.B. 1021.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Maass', is centered on the page.

Dave Maass
Investigative Researcher
Electronic Frontier
Foundation

CC: Sen. Anitere Flores, flores.anitere@flsenate.gov
Sen. Rob Bradley, bradley.rob@flsenate.gov
Rep. Matt Caldwell matt.caldwell@myfloridahouse.gov