

**RIGHT TO KNOW ADVISORY COMMITTEE**  
**Penalties Subcommittee**

April 3, 2018  
Meeting Summary

Convened 1:07 p.m., Room 600, Cross State Office Building, Augusta

Present:

Judy Meyer, Chair  
Luke Rossignol  
Eric Stout

Absent:

Rep. Chris Babbidge  
Chris Parr  
Linda Pistner

Staff:

Adam Bohanan

Welcome and introductions

Ms. Meyer, Chair of the Subcommittee, called the meeting to order and all members introduced themselves.

Discussion of penalty provisions

Ms. Meyer opened the discussion by noting that the subject of penalties has been raised in the full committee for each of the past ten years or more and led to the formation of the subcommittee. It was further noted that while the training requirement has been very successful in promoting good behavior with respect to fulfilling FOAA requests, changes to the current statute governing penalties for violations might do more to modify behavior. Such changes could include increasing the amount of the penalty, awarding the civil forfeiture to the requestor in addition to or instead of the state general fund, or allowing a private right of action.

Public Access Ombudsman Brenda Kielty then addressed the subcommittee and pointed out that FOAA is fundamentally a remedial statute rather than a punitive one. There are civil penalties, but the main recourse a requestor has is appealing a denial in court. However, she noted that court costs can be a significant barrier for a requestor who wishes to challenge a denial. Ms. Kielty encouraged the Subcommittee to consider unintended consequences of any changes to the law. For instance, would increasing the penalty change behavior? Could making attorney's fees more readily available lead to a flood of FOAA appeals led by plaintiff's attorneys? Ms. Kielty further emphasized the need for more education and training regarding the statute and renewed the recommendation to expand the list of public officials required to have FOAA training to include appointed officials as well as elected officials.

The discussion then turned to potential changes to law and an examination of approaches taken in other states. (An updated staff analysis of penalty statutes and legal remedies in all fifty states was distributed and is attached.) Mr. Rossignol expressed the opinion that allowing a

private right of action might be the only thing that would significantly alter behavior. He added that requiring that a requestor exhaust all administrative remedies or providing (or requiring) alternative dispute resolution (ADR) before a requestor could proceed to court could be a way to resolve disputes over records requests without resorting to costly litigation. Ms. Kielty added that while this could help resolve disputes, it could also delay the process of gaining access to records.

Mr. Stout suggested that holding state employees liable for fines in their individual capacities rather than as government employees could have a greater effect on behavior. He pointed out that this is more in line with how federal law addresses violations and noted that violations of the Federal Privacy Act, a companion to the Freedom of Information Act, levies a fine of up to \$5,000 that is paid by the individual and not by the agency. Ms. Kielty stated that training would be crucial if state employees were to be held individually and personally liable for FOAA violations.

Next, the Subcommittee highlighted certain models from the fifty-state survey and asked staff to do additional research to be discussed at the next meeting. Particular types of measures taken in other states that were of interest include levying fines against individual state employees, awarding fines collected to the requestor as well as the state, lowering the legal standard necessary for a prevailing plaintiff to be awarded attorney's fees, and the availability of ADR before proceeding to court.

#### Next meeting

The Subcommittee will hold its next meeting on April 26, 2018 at 11:00 a.m. in Room 437 of the State House, Augusta.

#### Adjournment

Ms. Meyer adjourned the meeting at 3:15 p.m.

Respectfully submitted,

Adam Bohanan

**Legal Standard for Attorneys' Fees for Plaintiffs  
For Open Records Violations – By State**

April 26, 2018

State	Standard (in statute and/or case law)
ALABAMA	Not in statute. An award of reasonable attorney's fees "may be proper where the case results in a benefit to the general public even though there was no bad faith involved" <i>Tuscaloosa News v. Garrison</i> , CV-99-408 (Cir. Ct. of Tuscaloosa County, Ala., Jan. 15, 2001).
ALASKA	Not in Open Records statute or case law. There is a "loser pays" provision in Alaska Rules of Civil Procedure for most civil litigation. (Rule 82).
ARIZONA	By statute, a court may award attorney fees that are reasonably incurred if person seeking public records has "substantially prevailed." Ariz. Rev. Stat. § 39-121-02(B). In case law, for plaintiff to prevail, denial must have been "wrongful." For government to defend a denial, must show that "considerations of confidentiality, privacy, or the best interests of the state" outweigh the presumption of public disclosure. <i>See Lake v. City of Phoenix</i> , 207 P.3d 725,
ARKANSAS	By statute, attorneys' fees may be awarded to a substantially prevailing plaintiff unless the court finds the position of the defendant was substantially justified or that other circumstances make award unjust. § 25-19-107. In case law, "court need not make a fee award in every FOIA case; indeed, the purpose of the fee-shifting provision is to assess fees and costs where public officials have acted arbitrarily or in bad faith." <i>Hamilton v. Simpson</i> , 993 S.W.2d 501, 502 (Ark. Ct. of App. 1999).
CALIFORNIA	By statute, attorney fees shall be awarded to the plaintiff upon prevailing. (Ca. Govt. Code § 6259). No clarification in case law.
COLORADO	By statute, attorney fees shall be awarded if plaintiff prevails and custodian acted arbitrarily and capriciously. § 24-72-204. No clarification in case law.
FLORIDA	By statute, attorney fees shall be awarded if court determines that an agency "unlawfully refused" access to a public record. § 119.12. In case law, entitlement to attorney fees for unlawful refusal to permit inspection or copying of a public record is based upon whether the public entity had a "reasonable" or "good faith" belief in the soundness of its position in refusing production. <i>Knight Ridder, Inc. v. Dade Aviation Consultants</i> , App. 3 Dist., 808 So.2d 1268 (2002).
GEORGIA	By statute, unless special circumstances exist, the prevailing plaintiff shall be awarded fees if the agency acted "without substantial justification." § 50-18-73. In case law, there is a two-prong test for attorney's fees. Plaintiff (appellants) must show that agency violated the access law, and if there was a violation, plaintiff must show that agency lacked substantial justification. <i>Jaraysi v. City of Marietta</i> , 2008, 294 Ga.App. 6, 668 S.E.2d 446.

**Legal Standard for Attorneys' Fees for Plaintiffs  
For Open Records Violations – By State**

April 26, 2018

State	Standard (in statute and/or case law)
IDAHO	By statute, court shall award reasonable fees to prevailing party if refusal to provide records was frivolously pursued. § 74-116. No clarification in case law.
ILLINOIS	By statute, court shall award prevailing plaintiff reasonable atty fees. § 140/11. In case law, a court may only deny fees if “special circumstances would render such an award unjust.” Callinan v. Prisoner Review Bd., 862 N.E.2d 1165. Record must be “of clearly significant interest to the general public, and the public body lacked any reasonable basis in law for withholding the record.” Lieber v. Board of Trustees of Southern Illinois University, 736 N.E.2d 213.
INDIANA	By statute, court shall award substantially prevailing plaintiff reasonable atty fees. § 5-14-3-9. In case law, atty fees are more discretionary, considering factors including whether the plaintiff substantially prevailed and the defendant’s violation was knowing or intentional. <i>See</i> City of Elkhart v. Agenda: Open Government, Inc., App.1997, 683 N.E.2d 622; Indiana Civil Liberties Union v. Indiana General Assembly, App. 4 Dist.1987, 512 N.E.2d 432.
IOWA	By statute, court shall award atty fees to any plaintiff successfully establishing a violation. § 22.10. In case law, good faith or reasonable delay appears to be sufficient for agency to defend. City of Riverdale v. Diercks, 2011, 806 N.W.2d 643.
KANSAS	By statute, court shall award atty fees if the denial was not in good faith and without reasonable basis in fact or law. § 45-222. No meaningful clarification in case law.
KENTUCKY	By statute, court may award reasonable atty fees to prevailing plaintiff if court finds that records were “willfully withheld.” § 61.882. No meaningful clarification in case law.
LOUISIANA	By statute, court shall award reasonable atty fees if plaintiff prevails. § 35. In case law, plaintiff must show that custodian acted arbitrarily and capriciously. Bacino v. City of Kenner, 131 So.3d 283, (La.App. 5 Cir. 12/12/13).
MAINE	By statute, court may award reasonable attorney’s fees and litigation expenses to the substantially prevailing plaintiff if the court determines that the refusal or illegal action was committed in bad faith. § 409.
MASSACHUSETTS	By statute, court may award reasonable atty fees to prevailing plaintiff. § 10A. No clarification in case law.
MICHIGAN	By statute, court shall award reasonable atty fees to prevailing plaintiff. § 15.240. In case law, court may not limit prevailing party’s access to atty fees; statute provides without qualification that court must award fees to prevailing plaintiff. Meredith Corp. v. City of Flint (2003) 671 N.W.2d 101,

**Legal Standard for Attorneys' Fees for Plaintiffs  
For Open Records Violations – By State**

April 26, 2018

<b>State</b>	<b>Standard (in statute and/or case law)</b>
MONTANA	By statute, court may award costs to plaintiff who prevails in action brought under Right to Know provision in MT constitution. § 2-3-221. In case law, award of fees is discretionary, but outright denial without rationale is an abuse of discretion. <i>Yellowstone County v. Billings Gazette</i> , 143 P.3d 135, 333 Mont. 390 (2006). Atty fees may be awarded even if agency acted in good faith. (This was a public meeting case but reasoning should apply.) <i>Associated Press v. Board of Public Educ.</i> , 1991, 246 Mont. 386, 804 P.2d 376.
NEBRASKA	By statute, court may award reasonable atty fees if requestor substantially prevails. § 84-712.07. No clarification in case law.
NEVADA	By statute, requester is entitled to recover reasonable atty fees upon prevailing. § 239.011. No clarification in case law.
NEW HAMPSHIRE	By statute, court shall award reasonable atty fees if agency knew or should have known it was in violation and if the lawsuit was necessary in order to make the information available. § 91-A:8. No clarification in case law.
NEW JERSEY	By statute, a prevailing requestor shall be entitled to reasonable atty fees. § 47:1A-6. No clarification in case law.
NEW MEXICO	By statute, court shall award damages, costs and reasonable attorneys' fees to any person whose written request has been denied and is successful in a court action to enforce the provisions of the Inspection of Public Records Act. § 14-2-12. No clarification in case law.
NEW YORK	By statute, court may award reasonable atty fees if requestor substantially prevails and there is a showing that the record was of public interest and that the agency had no reasonable basis for denying access. § 89. No further clarification in case law.
NORTH CAROLINA	By statute, court shall allow a prevailing requestor to recover reasonable atty fees unless agency acted in reasonable reliance on a court order or judgment or on an opinion of the Attorney General. § 132-9. In case law, bad faith is not standard to be used in determining whether withholding of public records was without substantial justification. <i>North Carolina Press Ass'n, Inc. v. Spangler</i> , 1989, 381 S.E.2d 187.
NORTH DAKOTA	By statute, court may award reasonable atty fees in a civil action based on any violation. (Damages for intentional or knowing violation.) § 44-04-21.2. No clarification in case law.

**Legal Standard for Attorneys' Fees for Plaintiffs  
For Open Records Violations – By State**

April 26, 2018

State	Standard (in statute and/or case law)
OHIO	By statute, court may award reasonable atty fees. Fees shall be construed as remedial and not punitive. § 149.43. In case law, award of fees is not mandatory. State ex re. Cincinnati Enquirer v. Daniels, 844 N.E.2d 1181. Reasonableness and good faith by the agency refusing to disclose may be considered. State ex re. Cincinnati Enquirer v. Dinkelacker, 761 N.E.2d 656.
OKLAHOMA	By statute, prevailing requestor shall be entitled to reasonable atty fees. § 24a.17. No clarification in case law.
OREGON	By statute, prevailing requestor shall be awarded reasonable atty fees. § 192.490. No clarification in case law.
PENNSYLVANIA	By statute, court may award reasonable atty fees if the court finds that agency refused access “willfully or with wanton disregard” or “otherwise acted in bad faith” or if the agency defended its refusal using an unreasonable interpretation of law. § 67.1304. Case law echoes these factors.
RHODE ISLAND	By statute, court shall award reasonable atty fees to prevailing requestor when imposing civil fine for knowing and willful or for reckless violation. § 38-2-9. No clarification in case law.
SOUTH CAROLINA	By statute, court may award reasonable atty fees to prevailing requestor. § 30-4-100. In case law, the only prerequisite for an award of fees is prevailing. Campbell v. Marion County Hosp. Dist. 580 S.E.2d 163. There is no good faith exception for an award of fees. New York Times Co. v. Spartanburg County School Dist. No. 7, 649 S.E.2d 28.
TENNESSEE	By statute, court has discretion to award reasonable atty fees to prevailing requestor if the court finds that the agency knowingly and willfully refused access. § 10-7-505. In case law, there is a good faith exception for agencies. <i>See, e.g.</i> , Friedmann v. Corrections Corp. of America, 310 S.W.3d 366.
TEXAS	By statute, court shall assess reasonable atty fees for substantially prevailing plaintiff unless agency acted in reasonable reliance on a court judgment or order or on a decision of the AG. § 552.323. Case law emphasizes that agencies are protected if they act in good faith (Texas Comptroller of Public Accounts v. Atty General, 244 S.W.3d 629) and suggest that courts have more discretion than the statute seems to say (Adkisson v. Paxton, 459 S.W.3d 761).
UTAH	By statute, court may assess reasonable atty fees if requestor substantially prevails. Factors for award include “the public benefit derived from the case, the nature of the requester’s interest in the records, and whether the [agency] had a reasonable basis.” § 63G-2-802. No case law.

**Legal Standard for Attorneys' Fees for Plaintiffs  
For Open Records Violations – By State**

April 26, 2018

<b>State</b>	<b>Standard (in statute and/or case law)</b>
VERMONT	By statute, court has discretion to award reasonable atty fees if requestor substantially prevails if agency concedes that the records are public and provides them to requestor within the time allowed for service of an answer under VT Rules of Civil Procedure. § 319. Case law echoes statute.
VIRGINIA	By statute, court shall award reasonable atty fees if requestor substantially prevails unless special circumstances would make an award unjust. § 2.2-3713. Case law echoes statute.
WASHINGTON	By statute, court shall award reasonable atty fees if requestor prevails. § 42.56.550. In case law, a showing of bad faith is not required. Spokane Research & Defense Fund v. City of Spokane, 117 P.3d 1117.
WEST VIRGINIA	By statute, court shall award atty fees to prevailing plaintiff. § 29B-1-7. No clarification in case law.
WISCONSIN	By statute, court shall award reasonable atty fees if requester prevails in whole or in substantial part. § 19.37. In case law, must be a causal connection between civil action and release of information. WTMJ, Inc. v. Sullivan, 555 N.W.2d 140.

**State Fines, Penalties and Attorneys' Fees  
For Open Records Violations**  
Updated April 26, 2018

State	Entity	Standard	Civil or criminal	Fines/penalties/Attorneys fees <i>(Other relief available)</i>
ALABAMA				-No provision for fines for wrongful failure to disclose -Public Records Law does not reference sanctions for noncompliance, but attorneys' fees have been awarded (2001 case)
ALASKA				-No sanctions for noncompliance -Full attorneys' fees have traditionally been available to the prevailing plaintiff in a public interest suit - <i>(Court may issue order to enjoin future violations)</i>
ARIZONA	Officer or the public body			-If wrongfully denied access to public records, has a cause of action for damages -If custodian acted in bad faith or in an arbitrary and capricious manner, superior court may award to petitioner legal costs, including reasonable attorneys' fees
ARKANSAS	A person	Negligent violation	Misdemeanor <hr/> Civil	-Fine of up to \$500, imprisonment for up to 30 days or both; alternatively, the defendant may be sentenced to "appropriate public service, education or both" -FOIA permits civil suits to enforce -Attorneys' fees maybe awarded to a substantially prevailing plaintiff unless the court finds the position of the defendant was substantially justified or that other circumstances make award unjust
CALIFORNIA	Public agency			-Court will award costs and reasonable attorneys' fees to prevailing plaintiff -Agency can recover attorneys' fees if agency prevails and court finds lawsuit was clearly frivolous - If an agency fails to obey a court order requiring disclosure of public records, contempt sanctions may be imposed after a hearing

**State Fines, Penalties and Attorneys' Fees  
For Open Records Violations**  
Updated April 26, 2018

State	Entity	Standard	Civil or criminal	Fines/penalties/Attorneys fees (Other relief available)
COLORADO	Custodian	Arbitrary or capricious		-No criminal penalty or fine -Violation had been a misdemeanor carrying a fine or up to \$100 and jail for 90 days; <b>repealed in 2009</b>  -If criminal justice agency arbitrarily or capriciously withheld a criminal justice record, court may impose a penalty of up to \$25 per day -Unless denial was proper, court shall order court costs and reasonable attorneys' fees to prevailing applicant -If denial was proper, court will award court costs and reasonable attorneys' fees to the custodian if the action was "frivolous, vexatious or groundless"
CONNECTICUT	Custodian or other official	"without reasonable grounds"	Civil	-Freedom of Information Commission can assess civil penalty of not less than \$20 and not more than \$1,000 for denial of a right under FOIA "without reasonable grounds."
DELAWARE				-Court may award attorneys' fees and costs to a successful defendant if the action was frivolous or was brought solely for the purpose of harassment
DISTRICT OF COLUMBIA	Any person	Arbitrary and capricious violation	Misdemeanor	-Fine of up to \$100
FLORIDA	Public officer Agency	Willing and knowing violation	First degree Misdemeanor Civil	-Fine of up to \$1,000, imprisonment of up to one year or both -If court finds agency unlawfully refused. Court will assess and award against the agency responsible the reasonable costs of enforcement including reasonable attorneys' fees
GEORGIA	Any person or entity	Knowingly and willfully Negligently	Misdemeanor Civil penalty	-Fine for criminal or civil penalty of up to \$1,000 for first violation; up to \$2,500 for additional violation within 12 mos -Court may award prevailing party reasonable attorneys' fees where it determines that either party acted without substantial justification either in complying with the chapter or in instituting the litigation

**State Fines, Penalties and Attorneys' Fees  
For Open Records Violations**  
Updated April 26, 2018

State	Entity	Standard	Civil or criminal	Fines/penalties/Attorneys fees (Other relief available)
HAWAII	Officer or employee of an agency	Intentionally	Misdemeanor	-Fine of up to \$2,000
IDAHO	Public official	Deliberately and in bad faith	Civil penalty	-Up to \$1,000 -Court shall award reasonable costs and attorneys' fees to the prevailing party or parties if it finds that the request or refusal to provide records was frivolously pursued
ILLINOIS	Public body	Willfully and intentionally, or otherwise in bad faith	Civil penalty	- Fine of \$2,500 to \$5,000; court may impose additional penalty of up to \$1,000 for each day the violation continues under certain circumstances - Prevailing party entitled to reasonable attorney's fees and costs
INDIANA	Individual or public agency		Civil penalty	-Up to \$100 for first violation; up to \$500 for each additional -The court will award attorneys' fees, court costs and other reasonable expenses of litigation to the prevailing plaintiff -An award of attorneys' fees to a prevailing defendant is discretionary if the court finds the action was frivolous or vexatious.
IOWA			Civil	-Court may assess the persons who participated in violation damages of not more than \$500 nor less than \$100 -The court will order the payment of all costs and reasonable attorneys fees, including appellate attorneys' fees, to any plaintiff successfully establishing a violation of the Open Records Act.
KANSAS	Agency	Knowingly	Civil penalty	-Fine up to \$500 for each violation -Attorneys' fees are allowable to either party, if the denial or the request was not in good faith and without reasonable basis in fact or law.
KENTUCKY			Civil	-Any person prevailing against an agency may be awarded costs and reasonable attorney's fees. -Court may also award up to \$25 for each day the person was denied access to the record.

**State Fines, Penalties and Attorneys' Fees  
For Open Records Violations**  
Updated April 26, 2018

State	Entity	Standard	Civil or criminal	Fines/penalties/Attorneys fees (Other relief available)
LOUISIANA	Any person having custody or control of a public record	Violation of any provision	Criminal	-1st offense: fine of not less than \$100 and not more than \$1,000, imprisonment for not less than one month and not more than six months -Subsequent offense: fine of not less than \$250 and not more than \$2,000, imprisonment for not less than two months and not more than six months or both -If a person seeking the right to inspect or to receive a copy of a public record prevails in such a suit, the person will be awarded reasonable attorneys' fees and other costs of litigation. If such person prevails in part, the court may award that person reasonable attorneys' fees or an appropriate portion.
MAINE	State government agency or local government entity	Willful	Civil violation	-Forfeiture of up to \$500 -The court may award reasonable attorney's fees and litigation expenses to the substantially prevailing plaintiff if the court determines that the refusal or illegal action was committed in bad faith. Attorney's fees and litigation costs may not be awarded to or against a federally recognized Indian tribe.
MARYLAND				-Penalty had been fine of up to \$1,000 plus damages and atty fees were available - <b>repealed in 2014</b>
MASSACHUSETTS				-No sanctions for noncompliance -Court may award attorney's fees and costs
MICHIGAN	Public body	Arbitrary and capricious	Civil	-Reasonable attorneys' fees, costs, and disbursements will be awarded to any person who prevails in an action to compel disclosure. -\$1,000 civil fine paid to the state general fund; \$1,000 damages to person seeking public record
MINNESOTA			Civil	-\$1,000 civil penalty; injunctive relief also available
MISSISSIPPI	Any person		Civil	-\$100 per violation
MISSOURI	Any official		Criminal	-Misdemeanor and punishment of up \$100 and/or up to 90 days in jail

**State Fines, Penalties and Attorneys' Fees  
For Open Records Violations**  
Updated April 26, 2018

State	Entity	Standard	Civil or criminal	Fines/penalties/Attorneys fees ( <i>Other relief available</i> )
MONTANA				-A plaintiff, who prevails in an action brought in district court to enforce their rights under the Open Records Act, may be awarded costs and reasonable attorneys' fees.
NEBRASKA	Any official	Violation	<u>Criminal</u> Civil	-Class III misdemeanor - Fine of up to \$500, imprisonment of up to three months or both -Equitable relief available; reasonable attorneys' fees and other litigation costs reasonably incurred by the complainant.
NEVADA	Public officer or employee	Acts in good faith		-Immune -Requestor may appeal denial to district court; if requestor prevails, the requestor is entitled to recover costs and reasonable attorney's fees in the proceeding from the agency whose officer has custody of the book or record.
NEW HAMPSHIRE	Public body  Public official or employee of public body	Knew or should have known in violation  Bad faith	Civil	-Injunctive relief available by filing in superior court -Reasonable attorneys' fees if the court finds that a public body knew or should have known that it violated statute -Fees may be awarded personally against a public official or employee of a public body who acted in bad faith -Court may impose civil penalty of between \$250 and \$2,000 if official or body acted in bad faith
NEW JERSEY	<u>Custodian</u> Public official, officer, employee, or custodian	<u>Willfully</u>	<u>Civil</u> Civil penalty	-Requestor may appeal denial in court; entitled to fees upon prevailing -\$1,000 for first violation; \$2,500 for second within 10 years; \$5,000 for third within 10 years
NEW MEXICO				-Injunctive relief or writ of mandamus may be issued to enforce public records act -Damages, costs, and reasonable attorneys' fees to person whose written request has been denied and is successful in court.

**State Fines, Penalties and Attorneys' Fees  
For Open Records Violations**  
Updated April 26, 2018

State	Entity	Standard	Civil or criminal	Fines/penalties/Attorneys fees (Other relief available)
NEW YORK				-Court may award reasonable attorneys' fees and other litigation costs reasonably incurred in any case in which the requestor has substantially prevailed, provided, however, that the court finds that: (1) the record involved was, in fact, of clearly significant interest to the general public; and (2) the agency lacked a reasonable basis in law for withholding the record.
NORTH CAROLINA				-Requester who prevails may seek attorneys' fees, which is discretionary with the judge
NORTH DAKOTA	Public entity	Intentional or knowing	Civil	-Declaratory relief, an injunction, or writ of mandamus may be issued
	Public servant	Knowingly	Criminal	-Court may award costs, fees -Court may award damages of \$1,000 or actual damages, whichever is greater -Class A misdemeanor
OHIO				-Court has discretion to award attorneys' fees when the person bringing suit obtains a writ of mandamus -Statutory damages of \$100 per day up to \$1,000 may be assessed; to be construed as compensation and not penalty
OKLAHOMA	A public official	Willful violation	Criminal	-Fine of up to \$500 and/or imprisonment of up to one year
			Civil	-May sue for declarative or injunctive relief -Reasonable attorney fees if requestor prevails; atty fees for agency if suit was "clearly frivolous"
OREGON				-Upon denial, requestor may petition the Attorney General; may be entitled to fees if requestor prevails
PENNSYLVANIA			Civil	-If the court finds that the requestor or the agency has acted in bad faith in pursuing an appeal or refusing access to records, it can award reasonable attorneys' fees to the prevailing party -Court may impose \$1,500 civil penalty if agency acted in bad faith; may assess additional penalty of \$500 per day for failure to comply with court order to produce records

**State Fines, Penalties and Attorneys' Fees  
For Open Records Violations**  
Updated April 26, 2018

<b>State</b>	<b>Entity</b>	<b>Standard</b>	<b>Civil or criminal</b>	<b>Fines/penalties/Attorneys fees (Other relief available)</b>
RHODE ISLAND	Public body or official	Knowing and willful	Civil	-Fine of not more than \$5,000 -Attorney General may investigate and file for injunctive or declaratory relief on behalf of requestor; fees available for requestor; fees available for agency if not in good faith.
SOUTH CAROLINA	Public body	Arbitrary and capricious	Civil	-Civil fine of \$500 (formerly criminal misdemeanor) -Equitable relief available -Court may award a successful plaintiff reasonable attorneys' fees and other costs of litigation.
SOUTH DAKOTA	Public entity	Bad faith	Civil	-Court may award costs, disbursements, and a civil penalty of up to \$50 for each day the records were delayed
TENNESSEE				-Attorneys' fees may be awarded if the refusal to disclose was willful
TEXAS	An officer for public information	With criminal negligence	Misdemeanor	-Fine of up to \$1,000, imprisonment of up to six months or both -The court shall assess costs of litigation and reasonable attorney's fees incurred by a plaintiff or defendant who substantially prevails. When determining whether or not to award attorneys' fees, the court considers whether the conduct of the officer for public information of the governmental body had a reasonable basis in law and whether the litigation was brought in good faith.
UTAH	Public employee	Intentionally	Class B misdemeanor <hr/> Civil	-Fine of not more than \$1,000, imprisonment of up to six months or both <hr/> -Injunctive relief available -Court may assess against governmental entity reasonable attorneys' fees and other litigation costs reasonably incurred if requestor substantially prevails - but subject to Governmental Immunity Act
VERMONT			Civil	-Court may award reasonable attorneys' fees and litigation costs to a substantially prevailing complainant; or against requestor under Rule 11 (Vt. R. Civ. P.)

**State Fines, Penalties and Attorneys' Fees  
For Open Records Violations**  
Updated April 26, 2018

State	Entity	Standard	Civil or criminal	Fines/penalties/Attorneys fees (Other relief available)
VIRGINIA	Individual member of public body	Willfully and knowingly	Civil penalty	-First offense: fine of not less than \$500 and not more than \$2,000 -Subsequent offense: fine of not less than \$2,000 and not more than \$5,000 -Costs and attorneys' fees will be awarded where the petitioner substantially prevails and where there are no special circumstances making the award unjust
WASHINGTON			Civil	-Court may award up to \$100 per day to requestor for each day records were withheld -A requesting party who prevails against the agency is entitled to its costs and attorneys' fees
WEST VIRGINIA	Custodian	Willful	<u>Misdemeanor</u> Civil	-Fines between \$200 and \$1,000 and/or up to 20 days in jail -Injunctive or declaratory relief available; custodian may be punished as being in contempt of court -If requestor prevails, attorney fees and court costs awarded
WISCONSIN	An authority or legal custodian	Arbitrarily and capriciously	Civil	-Forfeiture of up to \$1,000 -If the requester prevails in whole or in substantial part, the court will award reasonable attorneys' fees, costs, and damages of not less than \$100 -Court may award punitive damages to requestor
WYOMING	Any person	Knowingly or intentionally	Civil penalty	-Fine of up to \$750 (formerly misdemeanor)

G:\Studies - 2010\Right to Know Advisory Committee\penalties chart 2010.doc (4/26/2018 3:27:00 PM)

**State Fines, Penalties, and Attorneys' Fees  
For Open Records Violations – By Category**

Updated April 26, 2018

<b>Type of penalty or remedy</b>	<b>States</b>
Criminal sanctions (fine and/or imprisonment)	Arkansas, DC, Florida, Georgia, Hawaii, Louisiana, Missouri, Nebraska, North Dakota, Oklahoma, Texas, Utah, West Virginia
Civil penalty/fine/forfeiture	Colorado, Connecticut, Georgia, Idaho, Illinois, Indiana, Kansas, Maine, Michigan, Minnesota, Mississippi, New Hampshire, New Jersey, Pennsylvania, Rhode Island, South Carolina, South Dakota, Virginia, Wisconsin, Wyoming
Public employee personally liable for civil penalty/damages	Iowa (damages for violation, higher if “knowingly” violated); New Hampshire (if acted in bad faith)
No criminal or civil penalty	Alabama, Alaska, Arizona, California, Delaware, Maryland, Massachusetts, Montana, Nevada, New Mexico, New York, North Carolina, Ohio, Oregon, Tennessee, Vermont
Attorney fees available to plaintiff (usually if prevails or substantially prevails; standard varies)	Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin
Attorney fees available to defendant agency (usually if request or appeal is deemed frivolous)	California, Colorado, Delaware, Georgia, Idaho, Illinois, Indiana, Kansas, New Hampshire, Oklahoma, Pennsylvania, Rhode Island, Texas, Vermont
Damages available to plaintiff	Arizona, Iowa (paid by person who violated), Kentucky, Michigan (statutory damages, paid by agency), New Mexico, North Dakota, Ohio, Washington, Wisconsin
Injunctive, declaratory, or equitable relief available	Alaska, Arkansas, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, Utah, West Virginia