

 KeyCite Red Flag - Severe Negative Treatment
Disapproved of by [Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee](#), Fla., April 14, 2016

808 So.2d 1268
District Court of Appeal of Florida,
Third District.

KNIGHT RIDDER, INC., as publisher
of the Miami Herald, Appellant,
v.
DADE AVIATION CONSULTANTS,
a joint venture, Appellee.

No. 3D01-1461.
|
March 6, 2002.

After newspaper successfully brought action against airport consultants under the Public Records Act to have consultants produce public records of payments made to lobbyists, [800 So.2d 302](#), newspaper sought costs and attorney fees, which the Circuit Court, Dade County, [Alan Postman](#), J., denied. Newspaper appealed. The District Court of Appeal, [Schwartz](#), C.J., held that consultants had no reasonable or good faith belief in its refusal to produce public records.

Reversed.

West Headnotes (3)

[1] [Records](#)

 [Costs and Fees](#)

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. [West's F.S.A. § 119.12\(1\)](#).

[3 Cases that cite this headnote](#)

[2] [Records](#)

 [Costs and Fees](#)

Airport consultants had no reasonable or good faith belief in its refusal to produce public records of its payments to its lobbyists, and thus newspaper was entitled to attorney fees for action to enforce the Public Records Act, where consultants attempted to withhold records by raising, both before and during the litigation and in both the trial court and appellate court, one flimsy and transparent excuse after another in defense of its position, a pattern of conduct which amounted to stonewalling. [West's F.S.A. § 119.12\(1\)](#).

[2 Cases that cite this headnote](#)

[3] [Records](#)

 [Costs and Fees](#)

Airport consultants could not support claim of good faith, which would preclude an award of attorney fees under Public Records Act, in refusing to permit inspection of public records of payments made to its lobbyists, with opinion of “independent” counsel, because no full and complete disclosure of the operative facts upon which its legal conclusions depended was ever made to counsel; such attempts did not demonstrate good faith but provided affirmative evidence of actual criminal responsibility. [West's F.S.A. § 119.12\(1\)](#).

[4 Cases that cite this headnote](#)

Attorneys and Law Firms

*1269 Steel Hector & Davis and [Alvin B. Davis](#) and [Nikki B. Lewis](#), Miami, for appellant.

Tew Cardenas Rebak Kellog Lehman DeMaria Tague Raymond & Levine and C. Thomas Tew and [Joseph A. DeMaria](#) and [William T. McCauley](#), Miami; Carlton Fields and [Benjamine Reid](#), Miami, and [Robert E. Biasotti](#), St. Petersburg, for appellee.

Before [SCHWARTZ](#), C.J., and [JORGENSEN](#), J., and [NESBITT](#), Senior Judge.

Opinion

[SCHWARTZ](#), Chief Judge.

In [Dade Aviation Consultants v. Knight Ridder, Inc.](#), 800 So.2d 302 (Fla. 3d DCA 2001), we affirmed an order requiring Dade Aviation Consultants to produce public records of payments to its lobbyists to the Miami Herald. The trial court, however, denied the Herald costs and reasonable attorney's fees claimed under [section 119.12\(1\), Florida Statutes \(2000\)](#),¹ on the ground that the agency had not “unlawfully” declined initially to produce the materials. The Herald appeals and we reverse.

¹ 119.12 Attorney's fees.-

(1) If a civil action is filed against an agency to enforce the provisions of this chapter and if the court determines that such agency unlawfully refused to permit a public record to be inspected, examined, or copied, the court shall assess and award, against the agency responsible, the reasonable costs of enforcement including reasonable attorneys' fees.

[1] Entitlement to fees under the statute is based upon whether the public entity had a “reasonable” or “good faith” belief in the soundness of its position in refusing production. See [New York Times Co. v. PHH Mental Health Services, Inc.](#), 616 So.2d 27 (Fla.1993); [Stanfield v. Salvation Army](#), 695 So.2d 501 (Fla. 5th DCA 1997); *1270 [Harold v. Orange County](#), 668 So.2d 1010 (Fla. 5th DCA 1996). We have no doubt that the trial court abused its discretion in determining that Aviation Consultants actually did or reasonably could have maintained any such position. The record shows directly to the contrary.

[2] Although it had long recognized its obligations under Chapter 119 by providing indistinguishable records to the media on numerous occasions without objection, it attempted to withhold what it apparently regarded as the embarrassing information involved here, by raising—both before and during the litigation and in both the trial court and this one—flimsy and indeed transparent excuse after another in defense of its position: a pattern of conduct which amounted to the very definition of stonewalling.

[3] The correctness of our holding is perhaps best demonstrated by the fact that the factor upon which the appellee most heavily relies completely belies its position. Specifically, the primary, if not the only, basis for its claim of good faith is an opinion of “independent” counsel it secured to support its claim. The opinion, however, cannot serve this purpose because no “full and complete disclosure” of the operative facts upon which its legal conclusions depended was ever made to counsel. See [Glass v. Parrish](#), 51 So.2d 717 (Fla.1951); [Adler v. Segal](#), 108 So.2d 773 (Fla. 3d DCA 1959), cert. denied, 113 So.2d 834 (Fla.1959); [Williams v. Confidential Credit Corp.](#), 114 So.2d 718 (Fla. 3d DCA 1959); [Paulk v. Buczynski](#), 106 So.2d 100 (Fla. 2d DCA 1958). Indeed, it misled counsel by withholding, only for example, the actual agreement between the consultants and the lobbyists which demonstrated that their duties were in fact not related to any private function, as counsel opined. See [Dade Aviation Consultants](#), 800 So.2d at 302. Thus, in this, and in many other respects as well, the opinion was based on assertions known to Aviation Consultants to be contrary to the actual facts. In these circumstances, we apply the rule that attempts such as this to create a false basis for one's legal position not only do not demonstrate good faith, see [United States v. Condon](#), 132 F.3d 653 (11th Cir.1998), cert. denied, 523 U.S. 1088, 118 S.Ct. 1547, 140 L.Ed.2d 694 (1998), but provide affirmative evidence of actual criminal responsibility. [Douglas v. State](#), 89 So.2d 659 (Fla.1956); [Walker v. State](#), 495 So.2d 1240 (Fla. 5th DCA 1986); [Brown v. State](#), 391 So.2d 729 (Fla. 3d DCA 1980); 2 Wigmore, Evidence § 278 (Chadbourn rev.1979).

The order under review is reversed and the cause remanded with directions to make an appropriate award of attorney's fees and costs.

Reversed.

All Citations

808 So.2d 1268, 27 Fla. L. Weekly D532, 30 Media L. Rep. 1670