

On public records enforcement, Massachusetts is in bad company.

In every state except three, people who have been wrongly denied access to public records can recover attorneys' fees in some or all cases. The outliers? South Dakota, Wyoming and . . . Massachusetts. More than half of all states require courts to award attorneys' fees.

Today, Massachusetts agencies can deny a person access to public records without facing any consequences. Most people don't have the resources to hire a lawyer just to get records that were supposed to be public in the first place. So, a denial is typically the end of the road; the person simply does not get the public information she was seeking.

In other states, attorneys' fees act as an important incentive to comply with the law and provide information to the public.

Attorneys' fees do not mean major government expenses; they are rarely awarded, and awards are relatively small. With increased public records law compliance, far fewer cases need to be resolved in court, and agencies save themselves the cost and trouble of unnecessary litigation.

The 47 States with Attorneys' Fees Provisions

State	Statute	Statutory Language/Key Provisions
Alabama	Alabama Code § 36-12-40	<ul style="list-style-type: none">• No statutory provision, but fee awards granted under case law. See e.g., <i>Tuscaloosa News v. Garrison</i>, CV-99-408 (Cir. Ct. of Tuscaloosa County, Ala., Jan. 15, 2001)(An award is appropriate when the trial court determines that a case will result in benefit to the general public).
Alaska	Alaska Civil Rule of Procedure 82	<ul style="list-style-type: none">• Partial fees required if plaintiff prevails in whole or in part, unless the lawsuit "lacked colorable merit"• Full fees if case deals with constitutional issues and is brought by public interest or news media litigants
Arizona	A.R.S. § 39-121.02(B)	<ul style="list-style-type: none">• Optional if plaintiff "substantially prevails"
Arkansas	A.C.A. § 25-19-107	<ul style="list-style-type: none">• Required if plaintiff substantially prevails• Unless defendant was substantially justified• May not be assessed against the state or any of its agencies
California	Cal. Gov't Code § 6259(d)	<ul style="list-style-type: none">• Required if plaintiff prevails
Colorado	Colo. Rev. Stat. § 24-72-204(5).	<ul style="list-style-type: none">• Required if plaintiff has been denied access and subsequently prevails in court

State	Statute	Statutory Language/Key Provisions
Connecticut	Conn. Gen. Stat. § 1-206	<ul style="list-style-type: none"> Required if appeal is frivolous or solely for the purpose of delay Optional if plaintiff prevails in appeal of request related to the state's hazardous waste program
Delaware	29 Del. C. § 10005(d)	<ul style="list-style-type: none"> Optional if plaintiff is successful in court action
Florida	Fla. Stat. § 119.12	<ul style="list-style-type: none"> Required if court finds that the agency "unlawfully refused" the request
Georgia	O.C.G.A. § 50-18-73(b)	<ul style="list-style-type: none"> Required if plaintiff shows that agency acted "without substantial justification" Unless court finds that special circumstances exist
Hawaii	Haw. Rev. Stat. § 92F-15	<ul style="list-style-type: none"> Required if plaintiff prevails
Idaho	I.C. § 9-344	<ul style="list-style-type: none"> Required if plaintiff prevails And court finds refusal was "frivolously pursued"
Illinois	5 ILCS 140/11(i).	<ul style="list-style-type: none"> Required if plaintiff prevails
Indiana	Ind. Code § 5-14-3-9(i)	<ul style="list-style-type: none"> Required if plaintiff "substantially prevails" But, administrative exhaustion requirement: plaintiff must first seek make an informal inquiry to a public access counselor
Iowa	Iowa Code Ann. § 22.10	<ul style="list-style-type: none"> Required if plaintiff successfully establishes a violation
Kansas	Kan.Stat.Ann 45-222	<ul style="list-style-type: none"> Required if denial was in bad faith and without a reasonable basis
Kentucky	Ky. Rev. Stat. 61.882(5)	<ul style="list-style-type: none"> Optional if plaintiff prevails and court finds records were "willfully withheld"
Louisiana	LSA-R.S. 44:35(d)	<ul style="list-style-type: none"> Required if plaintiff prevails in whole Optional if plaintiff prevails in part Plus, Optional <i>actual damages</i> if custodian acted "arbitrarily or capriciously"
Maine	1 M.R.S.A. §409(4)	<ul style="list-style-type: none"> Optional if plaintiff prevails and denial was in bad faith
Maryland	Md. Code Ann. §10-623(f)	<ul style="list-style-type: none"> Optional if plaintiff "substantially prevails"
Massachusetts? HELLO, MASSACHUSETTS?		
Michigan	Mich. Comp. Law § 15.240(6)	<ul style="list-style-type: none"> Required if plaintiff prevails
Minnesota	Minn. Stat. §13.08, subd. 4	<ul style="list-style-type: none"> Optional Optional civil penalty \$1000
Mississippi	Miss. Code Ann. § 25-61-15	<ul style="list-style-type: none"> Optional if public records are denied Optional \$100 civil penalty per violation

State	Statute	Statutory Language/Key Provisions
Missouri	Mo.Rev.Stat. § 610.027.4	<ul style="list-style-type: none"> Required if court finds a “purposeful violation”
Montana	See <i>Billings v. Billings Gazette</i> , 2006 Mt 329	<ul style="list-style-type: none"> Optional if plaintiff prevails in an action to enforce right to public records access in Montana state constitution, Article II, Section 9.
Nebraska	Neb. Rev. Stat. § 84-712.07	<ul style="list-style-type: none"> Optional if plaintiff “substantially prevails”
Nevada	NRS 239.011	<ul style="list-style-type: none"> “Entitled” to fees if plaintiff prevails
New Hampshire	N.H. Rev. Stat. § 91-A:8	<ul style="list-style-type: none"> Required if lawsuit was necessary to enforce compliance <i>AND</i> custodian knew or should have known that conduct was in violation
New Jersey	N.J.S.A. 47:1A-6	<ul style="list-style-type: none"> Required if plaintiff prevails
New Mexico	NMSA § 14-2-12	<ul style="list-style-type: none"> Required if plaintiff is “successful in court action”
New York	N.H. Pub. Off. Law § 89(4)(c)	<ul style="list-style-type: none"> Optional if plaintiff substantially prevails <i>AND</i> the agency had no reasonable basis for the denial <i>OR</i> the agency failed to respond within the statutory time frame
North Carolina	G.S. § 132-9(c).	<ul style="list-style-type: none"> Court “shall allow” fee recovery if plaintiff substantially prevails, unless agency was following court order, published appellate opinion, or written opinion from AG
North Dakota	N.D.C.C. § 44-04-21.2(1)	<ul style="list-style-type: none"> Optional if court finds a violation Optional civil penalties of \$1000 or greater if violation was “intentional or knowing”
Ohio	Ohio Rev. Code Ann. 149.43	<ul style="list-style-type: none"> Required if custodian failed to respond within statutory time frame <i>OR</i> custodian promised to allow inspection within a specified time frame and failed to do so. Otherwise, optional.
Oklahoma	51 O.S. 24A.17	<ul style="list-style-type: none"> “Entitled” to fees if plaintiff is successful in court action
Oregon	Or. Rev. Stat. Ann. § 192.490	<ul style="list-style-type: none"> Required if plaintiff prevails in whole Optional if plaintiff prevails in part
Pennsylvania	65 Pa. Stat. § 66.1 et seq.	<ul style="list-style-type: none"> Optional if denial was willful or in bad faith <i>OR</i> if the exemptions claimed were not based on a reasonable interpretation of the law
Rhode Island	R.I. Gen. Laws § 38-2-9	<ul style="list-style-type: none"> Required if plaintiff prevails Judgment in plaintiff’s favor not a prerequisite to receive attorneys’ fees if defendant lacked grounding in fact or law
South Carolina	S.C. Code Ann. § 30-4-100(b)	<ul style="list-style-type: none"> Optional if plaintiff prevails in whole or in part

State	Statute	Statutory Language/Key Provisions
Tennessee	T.C.A. § 10-7-505(g)	<ul style="list-style-type: none"> Optional if denial was knowing and willful
Texas	Tx. Code. Ann. § 552.323	<ul style="list-style-type: none"> Required if plaintiff substantially prevails Unless agency acted in reasonable reliance on court order, appellate opinion, or opinion by the AG.
Utah	Utah Code Ann. § 63G-2-802(2), § 63G-2-405(2)	<ul style="list-style-type: none"> Required if government asserts confidentiality despite lack of relevant exemption and court denies confidential treatment.
Vermont	1 V.S.A. § 319	<ul style="list-style-type: none"> Required if plaintiff substantially prevails Optional if agency, in a timely answer to plaintiff's complaint, concedes that record is public and provides the record
Virginia	Va. Code Ann. § 2.2-3713(D).	<ul style="list-style-type: none"> Required if petitioner substantially prevails, unless special circumstances would make an award unjust Special circumstances may include reliance on AG opinion or court decision substantially supporting agency's position
Washington	RCW 42.56.550(4).	<ul style="list-style-type: none"> Required if plaintiff prevails Optional civil penalty up to \$100 for each day plaintiff was denied the right to inspect
West Virginia	W.Va. Code Sec. 29B-1-1	<ul style="list-style-type: none"> "Entitled" to fees if plaintiff successfully brings suit
Wisconsin	Wis. Stat. § 19.37(2)(a).	<ul style="list-style-type: none"> Required where requester prevails "in whole or in substantial part"

Summary

31 states require fees in some or all circumstances:

- Plaintiff "substantially prevails" – 6 states
 - AK, AR, IN, TX, VT, VA
- Plaintiff "prevails" or similar generic language about succeeding in court – 18 states
 - CA, CO, FL, GA, HI, IA, IL, LA, MI, NJ, NM, NV, OK, OR, RI, WA, WI, WV
- Government denied records knowingly, intentionally, or in bad faith, or frivolously appealed – 5 states
 - CT, ID, KS, MO, NH
- Other government failure (missed statutory deadline; unreasonable interpretation of an exemption) – 2 states
 - OH, UT

In 16 other states, fees are optional:

- Plaintiff "substantially prevails" – 6 states

- AZ, MD, NE, NY, NC, SC
- Plaintiff “prevails” or similar generic language about succeeding in court – 5 states
 - DE, MN, MS, MT, ND
- Government denied records knowingly, intentionally, or in bad faith – 4 states
 - KY, ME, PA, TN
- Case will result in benefit to the general public – 1 state
 - AL