

§ 132-5.1. Regaining custody; civil remedies.

(a) The Secretary of the Department of Cultural Resources or his designated representative or any public official who is the custodian of public records which are in the possession of a person or agency not authorized by the custodian or by law to possess such public records may petition the superior court in the county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such public records. The court may order such public records to be delivered to the petitioner upon finding that the materials in issue are public records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to possess such public records. If the order of delivery does not receive compliance, the petitioner may request that the court enforce such order through its contempt power and procedures.

(b) At any time after the filing of the petition set out in subsection (a) or contemporaneous with such filing, the public official seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed to grant one of the following provisional remedies:

- (1) An order directed at the sheriff commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth; or
- (2) A preliminary injunction preventing the sale, removal, disposal or destruction of or damage to such public records pending a final judgment by the court.

(c) The judge or court aforesaid shall issue an order of seizure or grant a preliminary injunction upon receipt of an affidavit from the petitioner which alleges that the materials at issue are public records and that unless one of said provisional remedies is granted, there is a danger that such materials shall be sold, secreted, removed out of the State or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if not seized or if injunctive relief is not granted.

(d) The aforementioned order of seizure or preliminary injunction shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner. (1975, c. 787, s. 2.)