Americans find government secretive, survey says

WASHINGTON, D.C. – Almost 90 percent of Americans want to know their presidential and congressional candidates’ position on open government, according to the Sunshine Week Survey 2008, which polled more than 1,000 adults. The survey was conducted by Scripps Howard News Service and Ohio University and released in March as part of Sunshine Week. Almost 75 percent of those surveyed also think the federal government is “very or somewhat secretive.” This is an increase of 13 percent from two years ago, according to The Associated Press.

Seventy-five percent of those surveyed also believe that the federal government has opened the mail or monitored the telephone conversations of Americans, although only 25 percent said they thought it happened to them personally, according to the survey. Two-thirds of the respondents think members of the media have been monitored in this manner, according to The Press.

Judge closes, reopens Web site

SAN FRANCISCO – A federal district court judge in San Francisco shut down a “whistleblower” Web site, then, citing First Amendment and jurisdiction concerns, reopened it one month later, according to The Associated Press.

U.S. District Court Judge Jeffrey White ordered a San Mateo, Calif.-based domain name registrar, Dynadot, to take down the Wikileaks.org domain name, effectively shutting down Wikileaks.org, which allows people to post leaked documents that expose “unethical” corporate and governmental behavior, according to The New York Times.

The initial order to shut down the Web site was a response to a complaint by a Cayman Islands bank that claimed an ex-employee had stolen documents and given them to Wikileaks.org. Wikileaks.org posted the documents online and alleged that they exposed “asset hiding, money laundering and tax evasion,” according to The Times. The Web site is available at http://www.wikileaks.org.

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University posts GPAs online

COLLIER COUNTY – Ave Maria University disclosed student grade point averages, test scores, exit interviews and research paper evaluations online in an apparent contradiction to federal education privacy laws, according to the Naples Daily News.

The files were among hundreds of internal assessment documents made publicly available on the school’s Web site for its Institutional Effectiveness Committee, which assesses its readiness for review by national and regional accreditation agencies.

Most documents were published without attribution, but in the literature department’s end-of-year report, student’s names were linked to grade point averages along with extensive assessments of their oral and written reports.

The federal Family Education Rights and Privacy Act classifies such information as private and prohibits the public disclosure without a prior written waiver by a student or her legal guardian if the student is a minor, according to the U.S. Department of Education.

The university removed the information from its Web site within hours of being notified that it was publicly available.

Jim Bradshaw, a Department of Education spokesperson, told the News that when a violation occurs, the department typically works with the school to resolve the matter, although the law does include enforcement options.

Source: Naples Daily News

City meetings streamed online

PANAMA CITY – The Panama City Commission became the first local government in Bay County to offer live online coverage of its meetings.

In February, the city launched online Web casts with an equipment and software purchase of approximately $12,000.

City Clerk Mike Bush said the city’s management wanted to stay technologically modern.

“Many cities provide that service already. Audio feed has been available, but we want to go to the next step,” said Bush, according to the News Herald.

The City’s information technology director, Jimmy Yates, said he has received positive feedback from the public since launching the Web casts.

“(The media) especially were excited about (the Web casts) because they can get back to it whenever they need to,” Yates said.


ISP releases e-mails to FBI

WASHINGTON, D.C. – The FBI gained access to e-mail messages from an entire computer network instead of the one e-mail address sanctioned for release by a secret intelligence court during a national security investigation, according to an internal report of the 2006 incident.

An unnamed Internet provider turned over all of the e-mail from hundreds of accounts on a small e-mail domain for which it served as host.

FBI officials blamed an “apparent miscommunication” with the Internet provider for the mistake.

The individuals whose e-mail was released were never informed because the national security investigation is ongoing, but FBI officials said the records were eventually destroyed.

“This was a technical glitch in an area of evolving tools and technology and fast-paced investigations. We moved quickly to resolve it and stop it. The system worked exactly the way it’s designed,” said FBI spokesperson Michael Kortan, according to The New York Times.

Source: The New York Times

Police ask media to wear ID tags

BRADENTON BEACH – Police Chief Sam Speciale ordered members of the media to wear credentials at public meetings in order to identify themselves.

He eventually rescinded the order he had sent out by press release to five local newspapers.

Speciale said it is not “an actual requirement. It’s more like a request,” according to the Sarasota Herald Tribune.

The “request” stemmed from increasing chatter at City Commission meetings, where members of the public were speaking loudly and out of turn, Speciale told the Tribune.

Speciale said it was acceptable for media to speak to one another during the meetings.

However, discussion among non-media members of the audience had become disruptive.

City commissioners wanted to be able to distinguish the media from the public, Speciale said.

Source: Sarasota Herald Tribune
Judge denies record-release delay

SARASOTA COUNTY – A circuit judge reaffirmed his denial of a defense motion to delay for 60 days the public release of documents about the murder of Denise Lee, according to the Charlotte Sun.

Circuit Judge Deno Economou rejected for a second time the argument made by attorneys for Michael King, who was charged with abducting and murdering Lee in January.

King’s attorney, assistant public defender John Scotese, argued that the documents should be kept sealed for a “reasonable time” to avoid prejudicial publicity.

Scotese argued that similar measures were taken in previous trials that garnered national media attention, including the Carlie Brucia murder trial in Sarasota and the Danny Rolling trial in Gainesville.

Scotese said a delay in the public release of records related to Lee’s murder would allow King’s attorneys to petition the judge to keep certain records secret.

However, Herald-Tribune attorney Rachel Fugate argued that the publicity King’s trial has received has not risen to a level that requires a delay in the public release of the records.

Source: Charlotte Herald-Tribune

Judge silences acquitted man

MIAMI – A federal judge who declared a mistrial for six South Florida men charged with conspiring to support al-Qaeda imposed a broad-sweeping gag order to protect efforts to seat an impartial jury for their retrial.

U.S. District Judge Joan Lenard prohibited the defendants, their lawyers, prosecutors, and others, including agents, investigators and witnesses, from speaking to the media, according to the South Florida Sun-Sentinel.

The order extended the same restrictions to Haitian national and U.S. resident Lygelson Lemorin, who was the only defendant acquitted in the first trial.

The order also applies to Lemorin’s criminal defense lawyer and the attorney representing him in immigration proceedings. Federal prosecutors contend the order even applies to Lemorin’s wife, who was once listed as a potential defense witness.

“This is supposed to be America. Once you’re acquitted, it seems to me you should be able to stand on top of the tallest building and scream it,” said David O. Markus, a Miami criminal defense attorney, according to the Sentinel.

Source: South Florida Sun-Sentinel

Judge closes hearing about closing hearing in attorney’s case

BUNNELL – A circuit judge closed a hearing on whether a subsequent hearing should be open to the public, according to the St. Augustine Record.

Circuit Judge Kim C. Hammond cleared the courtroom after the hearing began to hear arguments from State Attorney Harry Shorstein of Jacksonville and attorneys representing State Attorney John Tanner of Daytona Beach.

The subsequent hearing was set to consider whether a Duval County grand jury’s findings about an investigation by Shorstein should remain sealed.

Shorstein investigated Tanner’s handling of a case involving abuse allegations at the Flagler County Jail. Tanner began investigating the jail after one of his daughters, Lisa, was arrested and allegedly mistreated there in 2005.

Shorstein has argued for all proceedings to remain open to the public while Tanner’s lawyer, assistant state attorney Jonathan D. Kaney Jr., has argued for the proceedings to be closed.

Tanner has spent over $400,000 in 14 months to keep the grand jury’s findings sealed, arguing they were influenced by Shorstein’s bias against him.

Tanner is currently running for reelection in the 7th Circuit. The grand jury’s report concerning him remains sealed.

No subsequent hearings about the grand jury’s findings have been held.

Source: St. Augustine Record

Judicial conduct complaints open

WASHINGTON, D.C. – The Judicial Conference of the United States unanimously approved a binding set of procedures to make final orders of judicial complaints public.

In some cases, final orders of cases involving judicial conduct and disability proceedings may be placed on a court’s public Web site, and, in most cases, final sanctions will name the judge involved.

This is the first time that a uniform set of rules dealing with judicial complaints has been instituted nationwide, according to Dick Carelli, a spokesperson for the federal courts. Previously, differing rules among the states allowed inconsistencies.

“We hope this will bring more uniformity, more efficiency and ultimately more transparency to the process,” Carelli said, according to The Reporters Committee for Freedom of the Press.

The rule changes will allow some portions of the judicial conduct and disability proceeding process to remain confidential and sealed.

An order dismissing a complaint will reveal neither the complainant nor the subject of the complaint. Also, a chief judge of an appeals court will maintain the authority to investigate judicial conduct whether or not a formal complaint has been filed.

Source: The Reporters Committee for Freedom of the Press

The Brechner Report ■ May 2008

THE BRECHNER REPORT

Brechner Center for Freedom of Information
3208 Weimer Hall, P.O. Box 118400
College of Journalism and Communications
University of Florida, Gainesville, FL 32611-8400
http://www.brechner.org
e-mail: brechnerreport@jou.ufl.edu

Sandra F. Chance, J.D., Exec. Director/Exec. Editor
Ana-Klara Hering, Editor
Alana Kolifrath, Production Coordinator
Danielle Navarrete, Production Assistant
Kearston Wesner, Production Assistant

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Executive order meant to improve FOIA fails to deliver

In December 2005, President Bush issued Executive Order 13,392 on “Improving Agency Disclosure of Information.” The order purported to address several problems that have plagued the Freedom of Information Act (FOIA) system, including excessive backlogs and delays. It instructed agencies to take a “citizen-centered” and “results-oriented” approach to FOIA. Agencies were directed to review their FOIA programs, identify areas for improvement, and draft improvement plans setting goals for reform in several areas, including customer service, backlog reduction, and use of technology and the Internet to make information available to the public.

In its latest Knight Open Government Survey, *Mixed Signals, Mixed Results: How President Bush’s Executive Order on FOIA Failed to Deliver*, the National Security Archive examined how agencies have fared in implementing the order. The Archive focused on new customer service mechanisms established by the order, as well as backlog reduction and agency Web sites.

The Archive’s audit found that the executive order raised the profile of FOIA at many agencies, helping them to acknowledge problems and develop strategies for improvement. The order, however, did not provide agencies with any additional resources for achieving their goals and included no enforcement mechanisms to ensure agencies set adequate goals and succeeded in meeting them.

Significant gains can be seen across the board in customer service. The order mandates a new three-tiered customer service system, featuring FOIA Service Centers, Public Liaisons, and Chief FOIA Officers at each agency. This system has helped standardize FOIA customer service, giving requesters a clear point of contact at each agency. The Archive’s experience with this system was generally positive: most agency representatives were courteous and helpful, and almost all proved responsive to the Archive’s inquiries about its requests.

But the order falls short in several respects. Some agencies were able to achieve significant backlog reductions by setting and meeting ambitious goals. But other agencies fell far short.

Of the agencies and components with backlogs in 2005, 30 percent reported an increase in pending requests over the last two years. Notably, 15 percent of the agencies with backlogs — nine in total — actually claimed to have met all of their backlog reduction goals but still reported an increase in pending requests during the implementation period. The number of pending requests government-wide was only 2 percent lower at the end of FY2007 than it was before the order was issued.

In its 2007 audit, *File Not Found: 10 Years After E-FOIA, Most Federal Agencies Are Delinquent*, the National Security Archive found that many agencies failed to post essential guidance information and required documents and had poorly-designed Web sites that were difficult to navigate. A follow-up review of the 12 worst agencies identified in *File Not Found* revealed that only 42 percent (five agencies) significantly improved their Web sites, while the same portion, 42 percent, made no apparent improvement to their Web sites, despite serious deficiencies.

The audit results overall suggest that lack of resources and insufficient enforcement largely crippled the order’s effectiveness, allowing some agencies to remain deficient without consequences. Agencies that have historically taken FOIA seriously tended to show greater diligence in approaching the order, setting goals calculated to achieve measurable improvement.

Through recent legislation enacted in December 2007 that amended the FOIA, Congress has provided a mandate with more teeth and the prospect of genuine oversight. By codifying some elements of the order and requiring better reporting and tracking as well as penalties for noncompliance, the amendments establish the enforcement mechanism that is notably absent from the president’s order. The recent FOIA amendments, however, are just one of the necessary steps to fixing the many challenges the FOIA faces. Without more resources and better congressional and public oversight, some agencies may continue to be unable or unwilling to bring their FOIA programs into full compliance with the law.

Catherine Nielsen is the FOIA Coordinator at the National Security Archive. Kristin Adair serves as Staff Counsel at the National Security Archive.