THE
BRECHNER REPORT

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Media push for access to Gulf oil spill sites

NEW ORLEANS – Access to the Gulf oil spill has been limited by the government and BP, according to a report by *The Associated Press*.

CBS news reported one of its teams was threatened with arrest by the Coast Guard and turned away from a beach. The Coast Guard said the denial was under "BP's rules," according to the CBS report. The Coast Guard, however, said BP was not controlling access and denied threatening anyone with arrest.

A photographer for *The Times-Picayune*, Ted Jackson, said that access "is slowly being strangled off," according to the *AP*. Jackson said his requests to fly below 3,000 feet had been denied and he had been denied access to oily beaches.

NEWSGATHERING

"The oil spill from there is just a rumor," Jackson said.

Charter pilot Lyle Panepinto said his request to fly in restricted airspace was denied after he told a BP contractor that Jackson was his passenger. The contractor worked in a command center also staffed by the Coast Guard and the Federal Aviation Administration; he said the rules were set by the FAA and did not allow flights that weren't part of the response to the spill.

Coast Guard Admiral and spill coordinator Thad Allen said that media should only be prohibited from an area for security or safety reasons.

Source: The Associated Press

Commission accused of breaking Sunshine Law

WAUCHULA – The entire Wauchula City Commission is facing criminal charges for allegedly violating the Sunshine Law, according to *The Ledger* (Lakeland).

The charges stem from private meetings in September 2009 and March 2010.

A citizen complaint prompted an investigation by State Attorney Jerry Hill's office, and audio recordings of the meetings were given to investigators.

The September meeting focused on problems with the city manager. Mayor David Royal later stated that the meeting was private because he "didn't want a big headline story about" issues with the city manager, according to *The Ledger*.

ACCESS MEETINGS

The March meeting began as a public meeting, with the city attorney warning commissioners about compliance with the Open Meetings Law. But 22 seconds later, Royal asked everyone to leave the room except commissioners and the city attorney.

An audio recording of the closed meeting revealed five items were discussed, none of them falling into a Sunshine Law exemption.

In addition to Royal, commissioners Clarence Bolin, Jerry Conerly, Daniel Graham, Delois Johnson, Valentine Patarini and Yeavone Spieth are charged with two counts of violating the Open Meetings Law.

Each second-degree misdemeanor carries a punishment of up to 60 days in jail and six months probation.

Source: The Ledger

Florida Supreme Court rules company can sue out-of-state blogger for alleged defamatory posts

TALLAHASSEE – The Florida Supreme Court has ruled that non-residents can be sued for defamation if the information is accessible in Florida.

Blogger Tabatha Marshall, of Washington state, was sued by the employment firm Internet Solutions Corp. for defamation in a Florida federal court. The company claims its principal place of business as Orlando, though it is incorporated in Nevada.

Internet Solutions alleged that postings on Marshall's consumer complaint website accused it of "phishing" for personal information online.

The federal trial court dismissed Internet Solutions' suit for lack of jurisdiction over Marshall.

DEFAMATION

The company appealed, and the U.S. Court of Appeals for the 11th Circuit asked the Florida Supreme Court to determine whether the postings constituted "electronic communication into Florida."

The Court held that because the material was accessible and accessed in Florida, the suit could proceed. The Court has previously ruled that phone calls and e-mails are "electronic communications into Florida" but this is the first decision to include website postings.

The case will return to the 11th Circuit for consideration of Marshall's constitutional arguments.

Source: The Miami Herald

ACCESS RECORDS

Witness in Adam Walsh case wants missing report

HOLLYWOOD – A witness in the 1981 murder of Adam Walsh has filed a lawsuit in Broward Circuit Court seeking copies of a key investigative report.

Retired police officer Joe Matthews conducted an independent investigation of the case. Matthews' report was cited by police and prosecutors as key to closing the case in December 2008.

Ottis Toole, now deceased, had confessed to killing the 6-year-old boy after kidnapping him from a Sears store in Hollywood, Fla. Toole was named as the murderer, but he recanted multiple times and was never prosecuted.

Neither the Broward State Attorney's Office nor the Hollywood Police Department kept records of Matthews' investigation, according to the suit filed by Willis Morgan.

Morgan told police that he saw serial killer Jeffrey Dahmer at Sears the day Walsh went missing.

Matthews said he destroyed all but one copy of the report, which he gave to a co-author, who then took it to Cuba, according to *The Associated Press*. The defendants in the public records suit are Matthews, Hollywood Police Chief Chadwick Wagner and Broward State Attorney Michael Satz.

Source: The Associated Press

La. governor vetoes bill to open records of oil spill

NEW ORLEANS – Louisiana Gov. Bobby Jindal has vetoed legislation that would have required his office to keep open and preserve its records related to the Gulf oil spill.

The Deepwater Horizon rig exploded April 20, killing 11 and causing an oil spill in the Gulf of Mexico. BP, who leased the rig, has yet to stop the leak.

The bill calling for access to the governor's documents related to the spill was passed overwhelmingly by the Louisiana House and Senate, according to *The Miami Herald*.

Jindal's veto letter cited concerns for the implications of the open records in any future litigation against BP.

"The governor has opposed transparency for the three years he's been in office, so that's not a surprise," said Sen. Robert Adley (R-Benton), a sponsor of the bill.

Jindal has pressed BP to open its claims database to the state, a move Adley called hypocritical, according to *The Herald*.

The governor's chief attorney opposed several other public records measures in the recent legislative session, citing fear of suppressing free exchange of ideas in Jindal's office.

Source: The Miami Herald

High Court addresses texts, petitions and publicity

WASHINGTON – The U.S. Supreme Court recently issued three opinions related to freedom of information, the First Amendment and pre-trial publicity.

In *City of Ontario v. Quon*, the Court held that a SWAT team officer's privacy was not violated when his employer conducted an audit of his city-issued pager as long as the city had "a legitimate work-related purpose" for the review. Sgt. Jeff Quon used his pager to send sexually explicit messages and argued that there was an informal policy allowing personal use of the pagers.

In *Doe v. Reed,* the Court held that petition signatures gathered to put a referendum on a state ballot were subject to public disclosure. Protect Marriage Washington gathered the signatures in a bid to repeal a domestic partnership law in Washington state. When the signatures were requested under the state public records law, Protect Marriage Washington sued to block their release, citing concerns about "threats, harassment and reprisal." The Court rejected the broad challenge, citing the potential for disclosure to safeguard the voting process.

In *Skilling v. United States,* the Court held that pretrial publicity did not make the trial of former Enron Chief Executive Jeffrey Skilling unfair. Skilling challenged his conviction on other grounds as well, but the Court ruled that the heavy pretrial publicity surrounding his trial did not create a presumption of juror bias. Justices Sotomayor, Stevens and Breyer dissented, questioning the fairness of Skilling's trial.

Source: The New York Times, Reporters Committee for Freedom of the Press

FIRST AMENDMENT

Prosecutor sues to get job back after political talks

JACKSONVILLE – A former assistant state attorney has filed suit in a Jacksonville federal court, alleging that she was fired for speaking about her views on the U.S. Constitution at political events.

KrisAnne Hall was dismissed from her position overseeing felony prosecutions in Hamilton County after being warned not to speak to any "fringe" political groups, according to the *Tallahassee Democrat.*

Hall spoke at a Suwannee County Republican Executive Committee meeting, Tea Party rallies, a 9/12 Project meeting and a talk radio program. Hall's talks often centered on her views of the original intent of the Constitution.

Hall seeks to be reinstated in her job, lost wages, attorney fees and damages. The suit alleges that Hall's boss, State Attorney Robert "Skip" Jarvis, himself spoke at Democratic Party functions as an assistant state attorney.

Jarvis has maintained that his speeches were nonpartisan and that it was not the content of Hall's speeches but her inability to shed the authority of the State Attorney's Office that raised concerns, according to *Florida Today*.

Republicans Lt. Gov. Jeff Kottkamp and Attorney General Bill McCollum both publicly urged Jarvis to rehire Hall, and protestors gathered at the Suwannee County courthouse to support Hall.

Source: Tallahassee Democrat, Florida Today

Media seeks legal fees in NCAA case

TALLAHASSEE – The legal issue of whether documents provided by the National Collegiate Athletic Association (NCAA) to Florida State University (FSU) are public has been settled in favor of the media outlets who sued for access, but a dispute still exists over attorney's fees.

Two dozen media outlets sued for access to the records last summer, with collective attorney's fees nearing $300,000, according to *Florida Today*.

NCAA contends that it is not responsible for the attorney's fees because it resisted the records request based on a good faith belief that it was not subject to the Public Records Law.

FSU contends it pushed for the release of the records all along and therefore is not liable. Florida law allows successful plaintiffs in open government suits to recover legal costs.

Mediation is scheduled in the case, with a hearing set for September if mediation is not successful.

Source: Florida Today

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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
Christina M. Locke, J.D., Editor
Alana Kolifrath, Production Coordinator

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Stuart attorney seeks access to business development board

STUART – An attorney has filed suit against the Business Development Board of Martin County seeking to open its records and meetings to the public.

Virginia Sherlock wants the Board, which receives $625,000 per year from Martin County, to comply with Florida's Open Meetings and Public Records Laws.

The Board, however, contends it is not subject to open government laws. "Based on two independent attorney opinions and historical consideration of private, non-governmental economic development organizations by the Attorney General, we believe we are not subject to the Sunshine Law," a recent Board newsletter states.

Sherlock claims that in addition to receiving substantial funding from the county, the Board is subject to open government laws because it is the county's official economic development organization.

Source: TCPalm.com

Venice Taxpayers League settles Sunshine suit against school

VENICE – The Venice Taxpayers League has reached a settlement in its open meetings lawsuit against the Sarasota County School Board.

The group alleged that the school board's Financial Advisory Committee violated the Sunshine Law.

As part of the settlement, the school board will review its advisory committees to determine if they are subject to the Open Meetings Law, establish public e-mail accounts for advisory board members and provide annual open government training.

VTL has agreed to withdraw its public records requests and drop the lawsuit. The school board will pay $26,500 in attorney's fees to VTL.

VTL's attorney, Andrea Mogensen, also represented citizens in a Sunshine suit against the Venice City Council that resulted in an attorney's fee award of more than $750,000.

Source: Venice Gondolier Sun

New Smyrna Beach agrees to pay fees in cell phone record dispute

NEW SMYRNA BEACH – The city of New Smyrna Beach has agreed to settle a public records lawsuit over cell phone records.

Bill of Rights, Inc., which runs the online publication *NSB Shadow*, sued after the city charged it more than $300 to redact records from a city-issued phone. A circuit judge ruled in favor of Bill of Rights.

The city has agreed to pay $20,000 in attorney's fees to settle the suit, will provide the unredacted cell phone bills of the police commander and will review its public records policies.

Source: *Hometown News*

Judge denies citizen's bid for access to handwritten notes

SEBRING – A circuit judge has denied Preston Colby's bid to inspect the handwritten notes of the Highlands County administrator.

Judge Neil Roddenbery ruled that Colby "has failed to prove any of the elements required for an injunction," according to *Highlands Today.*

Colby had requested records in a zoning action as well the handwritten notes made by County Administrator Michael Wright at a meeting in Bartow. Wright said he was not surprised by the judge's ruling given the Florida Attorney General's Office stance on the issue.

Source: Highlands Today

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University of Florida
Brechner Center for Freedom of Information
3208 Weimer Hall, P.O. Box 118400
Gainesville, FL 32611

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Agencies slow to implement Obama's FOIA policy

The Back Page
By Nate Jones

As the Freedom of Information Act Coordinator for the National Security Archive, I oversee the thousands of FOIA requests our organization submits. My favorite part of the job is tearing open packages from the agencies and delving into the freshly declassified documents. Notwithstanding the fascinating documents we regularly receive, often the responses from the agencies are disappointing. Not long ago, the National Security Agency responded to a FOIA request with a printout of a Wikipedia article. More recently, the Central Intelligence Agency redacted a document which it had earlier allowed to be quoted in full in a bestselling history book. Despite President Obama's clear embrace of open government and FOIA from the first day of his presidency – emphasized in the memos he and Attorney General Holder sent to executive agencies ordering them to adopt improved transparency measures– we at the Archive have yet to see the government's full embrace of this "presumption of disclosure."

Nate Jones

The cliché goes that Obama's attempt to change executive policy is akin to recharting the course of a supertanker. But in regard to FOIA policy, the Archive's director, Thomas Blanton, suggests that commanding a "fleet of 90 ships" is a more apt metaphor—one ship for each of the approximately 90 federal agencies. The Archive's recent FOIA audit shows that despite a clear signal from the top, many of these agencies have failed to improve their FOIA policies. Only 13 of 90 agencies responded to our FOIA request by providing documents showing concrete changes in practice as a result of the Obama and Holder memos. A whopping 35 agencies claimed that they had no documents which illustrated a change in policy.

But there are strong signs that the Obama administration is serious about continuing to compel its "fleet" to improve the FOIA process. The day after the Archive published its audit, Chief of Staff Rahm Emanuel and White House Counsel Bob Bauer sent a memo to each agency head lauding their early efforts to improve transparency, but sternly reminding them that "more work remains to be done." Perhaps this rejoinder came as a result of the audit's finding that the oldest outstanding FOIA request was more than 18 years old and that 30 agencies have FOIA backlogs that are getting worse rather than better.

Despite these troubling findings, access to information under Obama's watch is beginning to improve. The president ordered the creation of a National Declassification Center to begin clearing the 409 million page backlog at the US National Archives. The annual budget for the National Archives and Presidential Libraries has been increased. Some agencies, the Department of State is a notable example, continue to regularly and effectively release requested documents and reduce their backlogs. In May, the Senate unanimously passed The Faster FOIA Act. If the bill becomes law, it will install a panel to study the FOIA request process and hopefully enact measures to reduce the years which requestors must often wait.

But in order to truly improve FOIA policy, the federal employees who actually decide what information should be withheld from the American people–the "sailors" on the 90 ships, if we keep with the metaphor–must also embrace openness. A recent Information Security Oversight Office report to the president highlights the disconnect between those pronouncing openness and those protecting secrets. The report states that those holding security clearances "do not challenge classification decisions as much as should be expected in a robust system." From my perch, it appears that the Attorney General's instruction to not withhold information merely "as a technical matter" and his encouragement to "make discretionary disclosures of information" are generally not implemented at the sailor level.

The president was correct when he wrote that FOIA is "the most prominent expression of a profound national commitment to ensuring an open government." However, for this "profound national commitment" to be fulfilled, the president must continue to compel his bureaucratic fleet to embrace FOIA and–most challengingly–he must instill that all classifiers and declassifiers "manning the decks" accept the presumption of the public's right to know.

Nate Jones is FOIA Coordinator at the NSA.