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# THE BRECHNER REPORT

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## Officials given maximum fine for violation

CRESTVIEW—An investigation, which began September 2011, ended with each of five Crestview City Council officials being fined \$500 for violating Florida's Sunshine Law.

County Judge Jim Ward administered the maximum fine for a single violation of the state's

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MEETINGS**

public meeting statute, a misdemeanor charge, but withheld adjudication of guilt, stating that he found no evidence of "ill will, malice or intent," according to the *Northwest Florida Daily News*.

More than 5,000 documents were released to three media

organizations, including the *Daily News*, following a public records request.

Emails released as part of the investigation indicated that council members had discussed matters through email that were required to be discussed at public meetings.

Source: *Northwest Florida Daily News*

## Florida ranked 15th, rates C- in transparency

TALLAHASSEE—Florida earned a C- grade for transparency on the national State Integrity Investigation (SII) report, according to the *Tampa Bay Times*.

The report, conducted by a coalition of nonprofit groups, including the Center for Public Integrity, ranked Florida 15th nationwide.

Florida's lower score may have been affected by the number of laws giving considerable leeway to lobbyists in "shaping policy and spending in Tallahassee," the *Times* reported.

The report was released shortly after the nonprofit Sunshine Review gave Florida a B rating in website transparency.

Florida law requires lobbyists to disclose their allegiances and report their compensation each quarter, but failing to do so seldom leads to significant penalties, the *Times* reported.

Florida's D rating in the campaign finance section of the SII report may also have been affected by the state's lobbying

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laws, which allow lobbyists and other individuals to contribute unlimited amounts of money to political parties, according to the *Times*.

The report also gave the state law marks for transparency in the areas of budgeting process, ethics enforcement and access to information, the *Times* reported.

Forty-three states received grades of C or below.  
Source: *Tampa Bay Times*

## Lakeland man receives Local Hero award

TALLAHASSEE—A Lakeland man who has filed dozens of lawsuits against state and local government agencies for their failure to comply with the Florida Public Records Law won the 2012 Local Hero Award during this year's Sunshine Week.

Joe Chandler—who runs the online transparency website FOGWatch.org (Florida Open Government Watch) and

owns his own data collection business, first began litigating violations four years ago when a local school board refused a records request.

In that lawsuit, Polk County School Board was forced to release employee health care records and reimburse him for \$35,000 in attorney's fees.

The award was announced during Sunshine Week, a national initiative,

held this year from March 11 to 17, focusing on state and national open government and transparency issues. Sunshine Week is sponsored by the American Society of News Editors, the Reporters Committee for Freedom of the Press, and the Knight Foundation.

Source: *RCFP.org, The Ledger (Lakeland)*

## Civic groups challenge new Fla. election law

TALLAHASSEE—Civic groups, including the Florida League of Women Voters and Rock the Vote, a group that focuses on young people, have filed suit in federal court, claiming Florida's new election law violates their constitutional rights.

**FIRST  
AMENDMENT**

They have asked U.S. District Judge Robert Lewis Hinkle to halt enforcement of the law, claiming that the law's provisions conflict with the National Voter Registration Act and constitute a violation of the groups' First Amendment rights to free speech and

freedom of association, *The Palm Beach Post* reported.

The new law requires voter groups to register with the state and also requires voter-registration forms to be turned in within 48 hours, instead of 10 days, as required under the old law, according to *The Post*.

Source: *The Palm Beach Post*

## Sheriff suspends communication with news media

LEE COUNTY—Lee County Sheriff Mike Scott has once again suspended communications with *The News-Press*.

In an email, Scott told public information officers and *The News-Press* editors that all briefings “are suspended until further notice and all media will be required to

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schedule appointments to review reports, etc,” *The News-Press* reported.

The embargo on communication was instituted following a misunderstanding with a reporter from *The News-Press*, who had attempted to contact the sheriff’s office several times, including calling Scott’s cell phone, for comment on a federal lawsuit against the sheriff’s office.

During a press conference following the email, Scott refused to answer questions from *The News-Press* reporters.

*The News-Press*’s attorney Steven Carta said courts in Florida have found it a violation of the First Amendment to retaliate against a media member for the way it reports or gathers news concerning that official.

Source: *The News-Press*

## The Miami Herald asks judge to unseal documents

NEW YORK—*The Miami Herald* asked a New York federal judge to unseal records in a criminal racketeering case.

A lawsuit accused a group of people associated with a New York investment firm of stealing millions of dollars from investors, including land investors in Florida. Records related to the case revealed details about one of the defendants that the prosecuting attorney said should never have been made public, the Reporters Committee for Freedom of the Press reported.

According to an article published by *The New York Times*, the documents revealed that one of the defendants, referred to in the pleadings as “John Doe,” not only pleaded guilty to a charge of organized crime but became a

cooperating witness for the government.

After placing the documents under seal, the federal judge overseeing the case in Manhattan referred the case to the State Attorney’s Office to determine how the documents were released and whether the prosecutor who published the name of the defendant should be held in criminal contempt.

In the *Times* article, the prosecutor said the secrecy surrounding the case against John Doe prevented investors from learning about the defendant’s criminal record, which the prosecutor said should have been disclosed.

*The Herald*, along with several other parties, filed a motion to unseal the

records, arguing that it was unclear whether there was an order entered actually sealing the records.

“This lack of notice to the public highlights the need to unseal the docket, as unsealing the docket could, among other things, provide the public with the reasons for why sealing was sought and why it was ordered,” the motion stated.

“Public docketing of all judicial matters is an essential component of the common law right of access to judicial records, fundamental both in its own right and as a means of facilitating access to judicial documents,” according to the motion.

Source: *RCFP.org*, *The New York Times*

### COURTS

## Americans more privacy-savvy online, study finds

CHICAGO—People on social networks may be more privacy-savvy now than they were two years ago, a new report from the Pew Internet & American Life Project found.

The findings were released a day after the Obama administration called for stronger privacy protections

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for individuals using the Internet, mobile devices and other online technologies, *The Associated Press* reported.

Among the study’s findings were that nearly two-thirds of individuals on social networks said they deleted friends from their account, in a practice called “profile pruning,” up from 56 percent in

2009, according to the report.

The report also found that 44 percent of respondents said that in 2011, they deleted comments from their profile, compared to 33 percent in 2009, and that women were more likely than men to restrict the privacy settings on who could view their profiles, 67 to 48 percent.

Source: *The Associated Press*

## Body scanners arrive at Southwest airport

FORT MYERS—Body-scanning machines with new software that will not put your real shape on display have arrived at Southwest Florida International Airport.

“With the installation of the latest software, we are able to employ state-of-the-art technology while taking privacy to the next level,” said Robert Cohen, federal security director at Southwest Florida International Airport.

The millimeter-wave imaging technology used in the new scanners does not create a passenger-specific image, Cohen said, and cannot store, print, transmit or save the generic outline of the image, which is automatically deleted from the system when cleared by a security officer, *The News-Press* reported.

The technology is already in use at about 100 airports across the county, according to *The News-Press*.

But the systems have raised concerns among public watchdog organizations, including the Washington D.C.-based Electronic Privacy Information Center (EPIC), which asked for details in an information request under the Freedom of Information Act more than a year ago. EPIC filed suit in February after receiving no new information. That suit is still ongoing, the paper reported.

Source: *The News-Press (Fort Myers)*

## Lawyers sue online legal databases

WASHINGTON, D.C.—Two lawyers filed a lawsuit against the online legal databases Westlaw and LexisNexis, alleging the databases violated federal copyright law.

The attorneys claim the databases infringed their copyrights by offering attorney materials, such as memoranda, briefs, motions and other documents, without seeking permission from the attorneys to post their work, according to the Reporters Committee for Freedom of the Press.

“The case is not really about attorney profit so much as it is about attorney’s having control over their work products and being able to decide for themselves who has the right to copy their work, who has the right to sell their work and who has the right to make derivative copies of their work,” said Gregory Blue, the plaintiffs’ attorney.

Intellectual property attorney Steve Smit said the issue in court will likely be whether the databases’ posting of the work constitutes fair use. Such a defense may not hold up in court where the defendant has profited from the work and made it available verbatim.

Source: RCFP.org

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## Surveillance cameras approved for GOP convention

TAMPA—The Tampa City Council approved a \$2 million budget for surveillance cameras for the upcoming Republican National Convention to be held in Tampa in August 2012.

About 60 surveillance cameras will be placed around the Tampa Bay Times Forum for the convention, but how the cameras will be used following the convention remains unclear. Council members scheduled a discussion for September on whether to pass an ordinance controlling how the cameras will be used after the convention, the *Tampa Bay Times* reported.

While council members supported buying the cameras for the convention, several were uneasy with the idea that the city could move them around Tampa afterward.

The city will use funds from a \$50 million federal convention security grant to buy them.

The technology will allow police to monitor traffic and crowds, dispatching officers quickly if problems arise. They also will preserve visual evidence of crimes that can be used later in prosecutions or civil cases that arise from the convention.

The ACLU contends the city shouldn’t have surveillance cameras after the convention in neighborhoods, especially downtown where crime is low, according to John Dingfelder, a former City Council member who is the ACLU’s senior staff attorney for mid-Florida.

Police also said details of a \$1.9 million Safeware purchase, which would provide protective equipment to police officers working crowd control during the convention, were exempt from disclosure under Florida’s Public Records Law because they concern security system plans.

Source: *Tampa Bay Times*

## School Board posts videos online

SANTA ROSA COUNTY—Individuals interested in watching the Santa Rosa County School Board’s meeting online can now access the videos immediately following the meetings, as well as other materials online.

**ACCESS MEETINGS**

School board superintendent Tim Wyrosdick said the purpose of posting the School Board materials online is to provide for efficient, timely communication with School Board constituents, such as parents, teachers and employees, according to the

*Pensacola News Journal*.

“This is another opportunity to provide a level of transparency for our public meetings and to eliminate excuses for not getting involved, since you can sit in your home or wherever you are in the world and watch these meetings live,” Wyrosdick said.

The videos and other materials are searchable, allowing viewers to watch all or certain portions of the monthly school board meetings, the *News Journal* reported.

Source: *Pensacola News Journal*

## Justice Department to post FOIA requests online

WASHINGTON, D.C.—Three offices within the U.S. Department of Justice will begin posting monthly lists of Freedom of Information Act requests.

Attorney General Eric Holder said the offices of the attorney general, deputy and associate attorneys general will publicly identify the subject matter and the disposition of the requests, reported *The Associated Press*.

The policy change follows a growth in the backlog of pending requests within those offices from 275 to 372 since 2010, according to the news report.

Holder said individuals making FOIA requests to the department will soon be able to submit those requests and track them online.

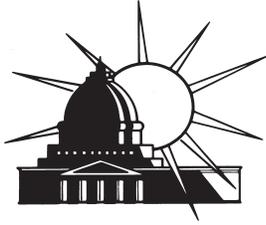
Source: *The Associated Press*

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## An Open Government Partnership for the states?

In September 2010, President Barack Obama addressed the United Nations General Assembly and spoke of democracy, dignity, and human rights. He said, “In all parts of the world, we see the promise of innovation to make government more open and accountable. And now, we must build on that progress. And when we gather back here next year, we should bring specific commitments to promote transparency; to fight corruption; to energize civic engagement; to leverage new technologies so that we strengthen the foundations of freedom in our own countries, while living up to the ideals that can light the world.”

The Open Government Partnership (OGP) to implement those challenges was formally launched in September 2011.

Why should FOI and openness advocates care about it? In part, because the goals and the aspirations of the partnership as embodied in the U.S. National Action Plan provide levers to more federal government openness. Even more, because the goals and

### The Back Page

By *Patrice McDermott*

processes of the OGP could serve as models for governments below the national level. What are those goals? The OGP “aims to secure concrete commitments from governments to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance.”

The U.S. government produced a National Action Plan last fall that makes a number of commitments that could change openness practices in the federal government, and also a number that are really a series of check-offs of things already in the works or even completed. We see it as a lever to push for movement in those areas on which we have been working for years.

The openness groups working at the federal level hope to see some real accomplishments in areas such as the management of the government’s records (in particular, electronic records and e-mail). We are pushing the administration to meet its commitment on using technology “to achieve greater efficiencies in FOIA administration, including utilization of technology to assist in searching for and processing records” and “as agencies increasingly post information on their websites...[to] ensure that the information is searchable and readily usable by the public” by throwing its support behind the FOIA Portal.



*Patrice  
McDermott*

Other commitments have to do with participating in the multinational Extractive Industries Transparency Initiative (think oil and mining leases and the money surrounding them) and with tracking aid from governments and donors.

The process of the OGP is also of potential value to state (and local) openness advocates. The OGP rules say that, to become a member of the partnership, participating countries must deliver a country action plan developed with public consultation and through a multi-stakeholder process, with the active engagement

of citizens and civil society. This process has generally been honored more in the breach than in the observance.

The federal government has not really engaged in public consultation, but it has been willing to meet with representatives of the openness community. The coalition *OpenTheGovernment.org* has set up a site, *opengovpartners.org*, to provide information about those meetings and the recommendations of civil society organizations on the government’s plan.

Although the implementation of the promise has been lumpy both here and abroad, the model does have strength and utility. A strong indicator of the power of the promises it portrays is that more than 50 countries have evinced active interest in joining the OGP. For the same reason, a movement in the states could make it very appealing to governors and legislatures to meet with members of the public and with “external stakeholders with strong commitments to the principles of open government” to develop—and implement—real commitments to advance transparency. The risk, internationally and domestically, is that it could turn into an empty and deceptive badge. Promises, as we all know too well, do not implement themselves.

How could this work, lumps and all, as a model for the states? That is the tough part, of course. It may well have to come from civil society as a demand. I encourage state coalitions of openness advocates to talk with other groups working on transparency and accountability in their states and elsewhere, and see if there is a lever here to “promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen governance” at the state, local, regional, and tribal levels.

*Patrice McDermott is director of OpenTheGovernment.org, which seeks to advance the public’s right to know and to reduce secrecy in government.*