THE
BRECHNER REPORT

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Florida court records going digital but not online

ACCESS RECORDS

TAMPA – Florida's court system is going online, but citizens of Florida may not be able to access court records digitally due to a 2003 state Supreme Court moratorium preventing most court records from being posted online.

Court clerks across the state have entered tens of thousands of criminal, civil, traffic and other public records onto computers, according to the *Tampa Bay Times*. While Florida law says that most government records are open to the public, the public is prohibited from accessing them on their computers, the *Times* reported.

The conflict is "causing consternation across the state as clerks increasingly digitize their records but are barred from giving the public online access," according to the *Times*.

"My feeling is that a public record is a public record," said Pinellas County Clerk Ken Burke.

Burke started posting traffic citations online a few years ago until the state told him to stop due to a 2007 Supreme Court administrative order specifically "disallow[ing] the electronic release of images of traffic citations, which can contain personal identifying information," the *Times* reported.

Still, citizens may have to visit their courthouses to access certain records.

"I guess the difference is the difference between whispering it in the closet and trumpeting it on the housetops," said Timothy McLendon, an attorney at the University of Florida's Center for Governmental Responsibility.

Source: Tampa Bay Times

Judge denies gag order in Zimmerman case

COURTS

ORLANDO – A Florida judge rejected a request for a gag order that would have prevented attorneys involved in the second-degree murder trial of George Zimmerman for the death of Trayvon Martin from talking about the case.

Prosecutors in October asked Judge Debra S. Nelson to impose a gag order, arguing that if the defense continued to speak about the case it would be difficult to find impartial jurors, according to the *Orlando Sentinel*. The defense has used blogs, Facebook and Twitter to post information about the case.

The defense, along with more than a dozen news media organizations, including *The New York Times* and *The Wall Street Journal*, opposed the gag order, arguing it would violate their First Amendment right to gather news and information, according to the Reporters Committee for Freedom of the Press (RCFP).

A gag order must only be imposed as a last alternative to ensuring a fair trial, according to the attorney who filed the motion to intervene on behalf of the media coalition, the RCFP reported.

Previously, Nelson denied the prosecution's request to seal court records and close hearings. She also allowed the defense to gain access to Martin's school records and social media accounts, but ruled that information obtained from the records would be exempt from public disclosure, the *Sentinel* reported.

Source: Orlando Sentinel, RCFP.org

Sunshine lawsuit halts Port Citrus feasibility study

OPEN GOVERNMENT

PORT CITRUS – A negotiating session between Port Citrus County officials and Martin Associates, the contractor selected to complete a feasibility study on the economic viability of building a port at the Cross Florida Barge Canal near Inglis, was put on hold, following the filing of a lawsuit by an Inverness resident.

Commissioner Rebecca Bays ended the session after only four minutes, stating the port chairman would set a meeting to discuss the lawsuit and how to proceed, according to the *Citrus Daily*. At that meeting, held in September, the port authority voted unanimously to hold an open public meeting to review the responses to solicitations for proposals for a port feasibility study that County and Port Attorney said "gave rise to the litigation," the *Daily* reported.

Attorneys for resident Robert A. Schweikert, the man who filed the lawsuit, sent a letter to the legal firm representing the county, stating that holding such a meeting would serve as a "cure" for the alleged Sunshine Law violations. The lawsuit stems from allegations surrounding the process by which Port Citrus officials ranked and eventually selected the firm to complete the feasibility study, the *Daily* reported.

Without conceding a Sunshine Law violation, board members agreed to repeat the process by which they chose the firm in public view, according to the *Citrus County Chronicle*. The discussion resulted in the selection of a different firm, TransSystems, to complete the feasibility study.

Source: Citrus Daily, Citrus County Chronicle

OPEN GOVERNMENT CONTINUED

School Board members explain Sunshine violation

STUART – Members of the Martin County School Board explained their May visit to a local high school at a September board meeting as a "cure" for their alleged Sunshine Law violation.

Citizens for Sunshine, a Sarasota-based nonprofit advocacy group, filed a lawsuit against the members in June, after it was found the members made an unannounced visit to the Stuart Adult Learning Center, according to the *Stuart News*.

Although not admitting to the violation, the three board members, including board chairman Sue Hershey and members Laurie Gaylord and David Anderson, said their visit came from an impromptu decision following an executive session meeting and that no business or decisions related to their official positions were discussed, the *News* reported.

At the September meeting, the attorney representing the board had members take a new vote on personnel and budget matters that included the Adult Learning Center, formerly approved over the summer, according to the paper.

The State Attorney's Office in Fort Myers is still investigating whether criminal charges can be brought against the board members for knowingly violating the Sunshine Law.

Source: Stuart News

ACCESS RECORDS CONTINUED

IRS gains access to Florida tribe's financial records in investigation

ATLANTA – A federal court ruled that the Internal Revenue Service (IRS) can access a Florida Indian tribe's financial records as part of an investigation into its gambling profits.

The 11th Circuit Court of Appeals in Atlanta ruled that the IRS can subpoena bank records, despite the Miccosukee tribe's claims that it is protected by sovereign immunity, according to *The Associated Press*.

The tribe's failure to comply with its tax obligations from 2000 to 2005 led the IRS to investigate whether gambling profits distributed to 600 members from 2006 to 2009 came within the federal tax withholding and reporting requirements, *The Associated Press* reported.

The Miccosukee tribe is exempt from paying taxes under federal law, but it is required to deduct and withhold income taxes on gambling revenues paid to tribal members.

The IRS subpoenaed records from four banks after the tribe refused to provide the requested financial records, according to *The Associated Press*.

Tribal officials argued the records would reveal confidential financial information.

A three-judge panel for the 11th Circuit ruled, however, that the records became bank property once the Miccosukees provided that information to the banks.

Source: The Associated Press

3.5 million Port St. Lucie records lawsuit partially dismissed

PORT ST. LUCIE – A lawsuit filed by six former Port St. Lucie police officers and employees, alleging violation of their constitutional rights for wrongful termination and a Sunshine law violation, was partially dismissed.

U.S. District Judge Jose E. Martinez ruled that the city manager did not violate the city's charter by eliminating the employees' positions in April, according to the *Fort Pierce Tribune*.

Martinez did rule, however, that other portions of the lawsuit, including a claim that officials violated Florida's Sunshine Law for allegedly meeting with the city manager before the employees were fired to give him guidance on the dismissals, could be refiled, the Tribune reported.

The former employees have sought more than 106 items, including city emails, city council minutes and other documents stemming as far back as 1992, according to the *Tribune.*

The city's legal office has stated it would cost the city $3.5 million in editing, copying and staff time to go through the records.

The suit seeks timely production of the records without an "unfair" cost.

Source: Fort Pierce Tribune

Lawsuit alleges candidate's emails are public record

SARASOTA – An open government activist filed a lawsuit against Assistant State Attorney Ed Brodsky for refusing to release emails he says are public records.

In the suit, Joe Chandler is asking a judge to review the records to determine whether Brodsky violated the state's Public Records Law, according to the *Sarasota Herald Tribune.*

"He reviewed his own emails without any oversight to determine if he's going to give those up," Chandler said. "I think that's deeply troubling," the *Herald Tribune* reported.

Brodsky, the assistant state attorney for the 12th Judicial Circuit, says the emails are personal and, therefore, exempt from public disclosure. Nearly a month after Chandler's initial request for the records, Brodsky responded that the State Attorney's Office would charge Chandler a "special fee" of nearly $1,500 for the records requested, according to the paper.

After paying the fee and receiving a disk full of emails, Chandler said he noticed emails were missing.

Brodsky provided an additional 400 emails following an additional request but withheld 364 more pages, according to the *Herald Tribune.*

Source: Sarasota Herald Tribune

Complaint aids changes for charter system meetings

LAKE WALES – The State Attorney's Office in Bartow launched an investigation after a complaint alleged a potential Sunshine Law violation of the Lake Wales Charter School System trustees' meetings.

Although the investigation uncovered no violation, Superintendent Jesse Jackson said he planned to make some changes to the way the meetings are run, according to *The Ledger (Lakeland)*.

Trustees have agreed to start their monthly 3:30 p.m. work sessions on time so that the business meetings can begin at 5 p.m.

Jackson said he will also make sure each site has working public address systems so that discussions at the meetings will be loud enough to be heard, *The Ledger* reported.

Resident Ed Bowlin filed the complaint, which resulted in the investigation, alleging that the Charter System often started its meetings ahead of the scheduled time, and that at one meeting, he could not hear what was being said by the trustees, even though he was sitting in the third row, according to *The Ledger.*

In his complaint, Bowlin said he believed starting the meetings ahead of schedule was a Sunshine Law violation by not giving notice in a way that allows the public and media to attend, *The Ledger* reported.

Since the Charter System moved to central offices in January, it has rotated its monthly meetings among its school sites. The central office does not have a room large enough for publicly noticed meetings, according to the paper.

Source: The Ledger (Lakeland)

Supreme Court to consider 12-year-old sealing order

WASHINGTON, D.C. – The U.S. Supreme Court released dozens of documents in a case against a businessman turned government witness.

The witness, Felix Sater, who has only been identified in court documents as John Doe, awaits criminal sentencing in the Eastern District of New York for his alleged involvement in helping convince investors to pour money into a failed Ft. Lauderdale high rise, according to the Reporters Committee for Freedom of the Press (RCFP).

The man, identified as Sater through independent reporting by *The Miami Herald*, has also been charged with civil racketeering.

The release of the documents was part of a request by the attorney for the plaintiff in the civil case against Sater to overturn a 12-year-old blanket sealing order still in effect in the underlying criminal prosecution, according to the RCFP.

COURTS

The plaintiff's attorney, Fred Oberlander, alleges the order constitutes an unconstitutional prior restraint, in violation of his First Amendment rights.

In an earlier proceeding, the 2nd District Court of Appeals in New York affirmed the trial court's issuing of a permanent injunction against release of the materials, the RCFP reported.

The 2nd District Court of Appeals then remanded the case to another federal trial court to ensure compliance with that order. When the court ordered Oberlander to destroy or return the sealed documents, he appealed again to the 2nd Circuit.

The Supreme Court, which will now hear the case, granted the businessman's request to file his petition asking the Court to hear the case under seal with redacted copies available for the public record, the RCFP reported.

Oberlander has stated that the secrecy surrounding Sater's criminal prosecution prevented investors from learning about the businessman's criminal record, according to the RCFP.

Source: Reporters Committee for Freedom of the Press, The Miami Herald

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EPIC sues FBI for StingRay info

WASHINGTON, D.C. – The Electronic Privacy Information Center (EPIC) has filed a Freedom of Information Act (FOIA) lawsuit to force the FBI to turn over internal documents related to law enforcement technology used to track down suspects, according to EPIC.

TECHNOLOGY

The technology, called "StingRay," tracks cell phones by tricking them into operating on a bogus network and can force targeted phones to release unique identity codes that can be used to track a person's movements in real time, according to *Slate.com.*

Use of the technology has come under scrutiny recently, such as in the case of *United States v. Rigmaiden*, where the FBI used a StingRay device to track down a suspect in an electronic tax fraud ring, according to EPIC. In February, EPIC requested records related to the StingRay devices and other cell site simulator technology, which it says could violate an individuals' Fourth Amendment rights.

The lawsuit alleges the FBI "failed to comply with statutory deadlines" by not responding to the FOIA request in a timely manner, according to the suit.

The FBI has released only 67 highly redacted pages of the 25,000 it says are related to EPIC's request, reported *Slate.com.* EPIC has requested a judge force the bureau to disclose all non-classified documents within 60 days.

Source: EPIC.com, Slate.com

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UF UNIVERSITY of FLORIDA

Practical solutions to the obstacles of open government

The Back Page

By Michelle Kimball

One of the constants in the access to government information process is the adversarial relationship between access professional and records requester. Research has shown time and again that requesters do not always receive the records they are lawfully allowed. As researchers, as citizens who request records, we all ask the same question -- "Why?"

I decided to go to the source. I recently studied what access professionals think about public records laws. I wanted to know if they believed in the philosophical underpinnings of the law. I also wanted to know what they think are the greatest obstacles to open government.

Michelle Kimball

I conducted both a survey and interviews to get the answers to my questions. Across the nation, 287 access professionals responded to the survey, and 48 agreed to participate in interviews.

The results showed that they strongly believed in the reasons for open government -- they said they believe in their place in a healthy democracy, and they take pride in the benefits transparency provides to the citizenry. They said repeatedly that they wish citizens did not see them as foes.

However, the results were riddled with complaints about those who request access to records. They complained that those who ask for records file "nuisance requests." They said they are angered by requests from disgruntled and paranoid citizens. They also said that requesters often misunderstand how government agencies work and file requests incorrectly. They think that citizens misunderstand the necessity for denying access to records, which engenders an adversarial relationship. They said the statutorily required response time is frustrating to meet.

Some of this is relatively easy to fix: The frustrations access professionals feel toward response times are the result of feeling rushed to respond to requests. Statutory time limits help ensure that requesters receive responses to their requests, so it is not advised that they change. However, agencies should investigate how much time access professionals have in their days to both respond to requests and to complete their duties, and they should provide increased staffing if necessary.

Providing more records online would also decrease the amount of time spent on requests. Access professionals in each government office are the experts on which records are most commonly requested and released. Providing online access to those records might be a cost-effective and efficient way to streamline some of the requests.

The more difficult aspect to remedy is the sometimes dysfunctional relationship between access professionals and records requesters. Increased training programs for citizens on how government works and how best to request information might diffuse some of the adversarial interactions. Previous research has shown that training programs tend to focus solely on government employees. More open-government training for citizens that explains the law as well as the internal structure of government agencies may decrease access professionals' frustrations.

Perhaps the greatest obstacle is a paradigm shift among access professionals. They believe in the value of open government, but they don't seem to recognize that the idea exists in a vacuum without someone to request the information. Access professionals must understand that their goal toward transparency is shared by citizens, and that they are partners in this endeavor. Showing access professionals that the interactions between themselves and requesters is an active sign of the democratic process may encourage them to have more patience with the requesters who fish for information, come in disgruntled and angry, or who misunderstand government.

It is unlikely that there will be a day when the interactions between citizens and government agencies are free from adversary. This study showed that the frustrations access professionals experience are generally with practical matters, rather than with the philosophy of access to government information. It is an encouraging result because it shows that both sides of the issue say they are attempting to reach the same goal: transparent, open government that enhances the health of democracy.

Michele Bush Kimball, Ph.D., is a visiting scholar with the Brechner Center for Freedom of Information. The full research article can be accessed at 17 COMM. L. & POL'Y 299 (2012).