
THE BRECHNER REPORT

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Sarasota, commissioner settle open meetings lawsuit

SARASOTA – The city of Sarasota settled its lawsuit with Citizens for Sunshine, the Sarasota Herald-Tribune reported. The city admitted violating Florida’s Open Meetings Law and agreed to pay \$17,680 in attorney’s fees to the government watchdog group.

Citizens for Sunshine alleged that commissioners Susan Chapman and Suzanne Atwell, along with other city officials, attended a meeting to build a coalition to address homelessness, according to the Herald-Tribune. Local business owners invited officials to attend the meeting, which was not open to the public. No notice was given about

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the meeting, the paper reported.

Chapman and Atwell were also named individually in the suit. The city and Atwell have each settled with Citizens for Sunshine. Chapman maintains she did not break the law and has not agreed to settle, the paper reported. The city likely will pay both Chapman and Atwell’s attorney’s fees.

In her personal settlement, Atwell agreed to donate to homeless veterans and attend Government-in-the-Sunshine Law training. City Attorney Bob Fournier estimated the total cost of the lawsuit to be about \$50,000, the paper reported.

Source: Sarasota Herald-Tribune

Groveland mayor resigns amid investigation of city officials

GROVELAND – Groveland Mayor James Gearhart resigned in the midst of a Florida Department of Law Enforcement (FDLE) investigation of city officials, The Daily Commercial (Leesburg) reported.

Citizens for Sunshine recently sued the city for violating Florida’s Sunshine Law when Gearhart, Vice Mayor Tim Loucks and a police sergeant allegedly discussed transferring the city’s police dispatching service in a grocery store parking lot, according to The Commercial.

Several city officials and staff quit this year and cited a hostile environment and misconduct by Gearhart and others as their reasons for leaving, the paper reported.

Despite many different allegations,

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the FDLE said there is only one active investigation against the city, according to the paper. The FDLE did not disclose the nature of the investigation.

Gearhart did not mention the pending investigation in his resignation letter, The Commercial reported. Instead, he blamed “the politics of Groveland,” and the “theatrics, and the brutal attacks by fellow associates” as reasons for resigning, according to the paper.

Interim City Manager Willie Morgan said a special election likely will take place to fill Gearhart’s position because there are more than six months left in his term, The Commercial reported.

Source: The Daily Commercial (Leesburg)

EDC argues it’s not subject to records law

BREVARD COUNTY – Florida’s Space Coast’s Economic Development Committee (EDC) argued in court that it was not a public agency and should not have to comply with Florida’s Public Records Law, Florida Today reported.

Brevard County Clerk of Courts Scott Ellis requested documents from the EDC regarding its business relationship with BlueWare, according to Florida Today. The EDC released some of the requested records, but Ellis filed a petition to compel the release of the remaining documents regarding financial matters.

Circuit Judge John Moxley Jr. ruled that Ellis’s petition was not appropriate in this case and asked both parties to prepare arguments

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regarding the EDC’s status as a public agency, Florida Today reported.

Ellis believes that since the EDC is partly funded by county taxes, it should comply with his document requests, the paper reported.

“They are clearly a public agency, and their records should be subject to public-records law,” Ellis said.

BlueWare is currently being investigated in connection with former Clerk of Courts Mitch Needelman’s public corruption case, the paper reported. The EDC helped BlueWare qualify for funding to relocate to Melbourne, according to Florida Today.

Moxley said another hearing will be scheduled to discuss the matter, the paper reported.

Source: Florida Today

Federal farm bill could limit FOIA disclosures

WASHINGTON, D.C. – Congress is currently considering a farm bill that would protect information about farmers and their employees from Freedom of Information Act (FOIA) requests, The Associated Press reported. The bill could limit disclosures regarding large farms that pollute water or soil, according to the AP.

Congress drafted the security

provisions after the Environmental Protection Agency accidentally released farmers' personal information in FOIA requests, the AP reported. The information included names, addresses, phone numbers, and employee data. Limiting access to such information was intended to protect farmers from environmental advocacy groups, according to the AP.

Several open government and journalists groups sent a letter to Congress opposing the bill because they feel the security provisions are too broad, the AP reported. The groups said federal laws already exist to protect such personal information.

The House and Senate are currently negotiating the bill, according to the AP.

Source: The Associated Press

Pensacola Chamber moves out of Sunshine for fundraising

PENSACOLA – The Greater Pensacola Chamber plans to create a private entity for its fundraising actions, according to the Pensacola News Journal.

The chamber's current fundraising structure, called Foundation Inc., receives money from private donors and taxes, so it is subject to Florida's Open Meetings Law and Public Records Law, the paper reported.

Chamber CEO Jerry Maygarden proposed creating a tax-exempt entity that operates solely on private money, according to the News Journal. The private foundation could give the chamber money but would not "engage in public advocacy," Maygarden said.

"This is not intended to be a shell

game where we're trying to hide everything," Maygarden told the News Journal. "It would be a somewhat autonomous board engaged in the development of regional prosperity."

Maygarden said creating a private fundraising entity would protect donors from public records requests regarding their donations, according to the News Journal. Maygarden mentioned that many donors were concerned that their pledges were subject to Public Records Law.

Maygarden said this is the first step in reconfiguring the chamber as a whole into a private entity, according to the paper.

Source: Pensacola News Journal

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NSA violated its own privacy regulations in new documents

WASHINGTON, D.C. – Recent documents released from the National Security Agency (NSA) reveal that it continually violated privacy policies when monitoring American emails, according to The Los Angeles Times.

Several groups submitted Freedom of Information Act requests to obtain the information. The documents indicate an over-collection of data and ineffective oversight of the email surveillance program, according to the paper.

The documents include previously classified Foreign Intelligence

Surveillance Court opinions. These opinions reveal that the email surveillance program exceeded the scope of monitoring only those individuals suspected of communicating with

terrorists, according to the Times.

The documents appear to blame the violations on mismanagement and not on bad faith, The Times reported.

Congress is currently considering whether to take away the NSA's authority to monitor American telephone records, the paper reported.

Source: The Los Angeles Times

PRIVACY

Subpoena reveals tension

TALLAHASSEE – State insurance investigators withdrew a subpoena for a reporter's recordings made for a story on health insurance plans under the Affordable Care Act, the Tallahassee Democrat reported.

WFSU reporter Lynn Hatter investigated individuals marketing health insurance plans under the auspices of "Obamacare," according to the Democrat. Her story indicated that these individuals were not affiliated with the federal insurance plan.

The Florida Department of Financial Services issued a subpoena for Hatter's recordings at the request of Florida

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State University, the Democrat reported. The department oversees insurance agents and claims of insurance fraud.

The department withdrew the subpoena, which came at the direct request of FSU attorneys, after Hatter said she was uncomfortable with it, according to the Orlando Sentinel.

Hatter qualifies as a state employee because she works for a public radio station affiliated with Florida State University, but she is also a journalist. The case reveals the tension between Florida's shield law, which protects journalists' sources, and Florida's Public Records Law, which allows public access to government documents, the Democrat reported.

Source: Tallahassee Democrat, Orlando Sentinel

THE BRECHNER CENTER

2013 FREEDOM OF INFORMATION REPORT

Published by The Brechner Center for Freedom of Information ■ College of Journalism and Communications ■ University of Florida

Court rules teacher data is now public record

TALLAHASSEE – The 1st District Court of Appeals ruled that information used in teacher evaluations is subject to Florida’s Public Records Law, according to The Associated Press.

The Florida Times-Union sued the Florida Department of Education to compel release of data related to student test scores, which the state uses to evaluate teachers, the AP reported. The evaluations themselves are exempt

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from disclosure for two years, but the information used to prepare those evaluations should not be exempt, according to the appellate opinion.

“To so hold would be to expand an exclusion to the public records act beyond what was plainly intended by the Legislature, which a court may not do,” the opinion stated.

Jennifer Mansfield, an attorney for The Times-Union, said the ruling was a

victory for transparency.

“More importantly, it’s going to provide the voting public the ability to evaluate the legislature’s process for teacher review that is has set up,” Mansfield said.

The Florida Department of Education has not said whether it will release the data or challenge the ruling, the AP reported.

Source: The Associated Press, Morris Publishing Group v. Florida Department of Education, Case No. 1D13-1376

Records requests reveal public corruption

BREVARD COUNTY – Public records requests of personal emails proved crucial in building the Florida Department of Law Enforcement’s investigation of former Brevard County Clerk of Courts Mitch Needelman, Florida Today reported.

Needelman was charged with official misconduct, a third degree felony, for using his personal email for official business, according to Florida Today. Needelman also allegedly instructed his

staff and others to use personal email accounts in an attempt to circumvent Florida’s Public Records Law.

The State Attorney’s Office released interviews revealing that Needelman instructed his staff and others to use personal email accounts when discussing the county’s scanning contract with BlueWare, the paper reported. The interviews also indicate that Needelman

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advised employees to delete work-related emails.

Needelman was also charged with bribery, bid-tampering and unlawful campaign contributions, according to the paper. He is accused of awarding a multi-million dollar scanning contract to BlueWare in exchange for campaign funds.

Source: Florida Today

LPD investigation incited by records requests

LAKELAND – The Lakeland Police Department was investigated by a grand jury regarding their public records policy, according to The Ledger (Lakeland). The grand jury presentment, still currently under seal, discussed how the LPD handled public records and why the media struggle with getting records from the LPD, The Ledger reported.

The 2nd District Court of Appeals ruled that the grand jury presentment

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should be unsealed and released to the public, according to the paper. The opinion did not give a specific date for the release.

The investigation began after The Ledger published a series of articles regarding its difficulty obtaining records from the LPD, the paper reported. One of the articles described Police Chief Lisa Womack telling a reporter that the LPD often plays a “cat-and-mouse” game with the media over

records requests.

Following the grand jury investigation, the LPD hired retired appellate judge Monterey Campbell to examine its public records procedures, The Ledger reported. Campbell found no problems with the LPD’s policies.

The city of Lakeland spent over \$220,000 in legal fees during the grand jury’s investigation. The majority of the fees went to keeping the presentment sealed, according to the paper.

Source: The Ledger (Lakeland)

Voter information, misconduct complaints among exemptions

TALLAHASSEE – The following is a summary of 12 Public Records and Open Meetings Law exemptions passed in 2013. Copies of the legislation in full are available at the Florida Legislature's website (www.leg.state.fl.us). SB = Senate Bill; HB = House Bill; CS = Committee Substitute.

CS/SB 4 Ethics – Written Referrals:

Creates a public records exemption for written referrals and related documents held by the Ethics Commission. Preliminary investigation records and proceedings at which referrals or records are discussed are also exempt. Documents will be exempt until dismissed or acted upon.

CS/HB 249 Voter Email Address:

Exempts from public records email addresses of registered voters and those applying for voter registration. (Nelson, R-Apopka).

CS/HB 361 Criminal Justice

Commissions: Creates a public meetings exemption for portions of meetings of a “duly constituted criminal justice commission” where information regarding criminal intelligence or investigative information is discussed, if such information is being considered or may be considered by the commission. (Kerner, D-Palm Springs).

CS/HB 649 Electric Utility –

Proprietary Business Information: Creates a public records exemption for confidential business information between a private entity and a public electric utility company. The information must remain confidential for one year following any electric project review or improvement project. (Cummings, R-Orange Park).

CS/HB 731 Names of Spouses:

Exempts from public records the names of spouses and children of law enforcement and related fields. Those fields include active and former law enforcement, correctional officers, state attorneys and prosecutors, assistant state attorneys and prosecutors, and certain employees from the Department of Children and Families, Department of Health and Department of Revenue. (Kerner, D-Palm Springs).

CS/HB 1075 Complaints of Employee Misconduct: Creates a public records

exemption for complaints and information obtained during an investigation of public employee misconduct. Such information will be exempt until the investigation is no longer active or it is dismissed. (Rangel, D-Kissimmee).

CS/HB 1085 Natural Gas Storage – Proprietary Business Information:

Exempts from public records the confidential business information of applicants for natural gas storage permits from the Department of Environmental Protection. Lists occasions when such information must be disclosed, including court orders. (Eagle, R-Cape Coral).

HB 1297 False Claims Act

Investigations: Creates a public records exemption for complaints and information received by the Department of Financial Services

for violations of the False Claims Act. Such information will be exempt until the investigation ends or becomes inactive. (Young, R-Tampa).

CS/HB 1327 Criminal History –

Human Trafficking Victims: Exempts from public records the criminal history of human trafficking victims that has been expunged. History will be accessible in specific circumstances. (Spano, R-Riverview).

SB 1850 Citizens Property Insurance

– Proprietary Business Information: Creates a public records exemption for proprietary business information submitted by an insurer to the Citizens Property Insurance Corporation's clearinghouse. Lists specific circumstances for disclosure.

HB 7089 School Lunch Program:

Exempts from public records the personal information of school lunch program recipients and applicants held by the Department of Agriculture and Consumer Services, the Department of Children and Families or the Department of Education.

CS/HB 7135 Financial Regulation

Payments: Creates a public records exemption for personally identifying transaction information in the Office of Financial Regulation's database.

The following 5 exemptions were reenacted in 2013 under the Open Government Sunset Review Act (OGSR).

Right to speak at meetings law passed

TALLAHASSEE – The legislature passed and the governor signed a law giving people the right to speak at public meetings in 2013. The law requires that members of the public be given a reasonable opportunity to speak on a matter before a board or commission, according to the law.

While the new law provides an opportunity for the public to speak, public officials still have the right to maintain orderly conduct and decorum at a public meeting.

Florida's Open Meetings Law does not explicitly give the public a right to speak. The new right to speak law is codified in section 286.0114, Florida Statutes.

Source: Florida Statute 286.0114

SB 452 Donors – Organ and Tissue

Registry: Reenacts a public records exemption for the identity of organ and tissue donors.

CS/SB 1768 Personal Information

– Paratransit Services: Reenacts an exemption from public records for the personal identification information of people receiving or applying for paratransit services.

HB 7079 Agency Employees – Victims

of Domestic Violence or Sexual Abuse: Reenacts a public records exemption for personal identifying information in sexual or domestic violence records provided by agency employees.

HB 7143 Donors – Department of

Veterans Affairs: Reenacts a public records exemption with minor modification of the identity of donors or prospective donors to the Department of Veterans Affairs. The bill also exempts portions of meetings where such information is discussed.

HB 7145 Investigations – Employment

Discrimination Complaints: Reenacts an exemption from public records of complaints and other records pertaining to employment discrimination claims until the claim is acted upon or dismissed.

Source: Florida First Amendment Foundation (floridafaf.org), www.flsenate.gov and myfloridahouse.gov

LEGISLATIVE
SESSION REPORT

Access to electronic records, litigation exceptions included in AGO opinions on Sunshine Law

TALLAHASSEE – Attorney General Pam Bondi's office weighed in on several open government issues in 2013, ranging from access to electronic records to Sunshine Law exemptions regarding attorney-client meetings where a state entity is involved in litigation.

Below are summaries of these Florida Attorney General Advisory Legal Opinions. The full-text opinions are available at <http://www.myfloridalegal.com>.

Charges for providing copies of public records by email: May the city of Miami Gardens impose a fee when documents are downloaded and submitted by electronic mail, in lieu of photocopying, to the requestor?

AGO 2013-03: Yes. The city of Miami Gardens may charge a requestor the “actual costs of duplication” when responding to records requests via electronic mail. “Actual cost of duplication” includes only the cost of materials used to duplicate the records and does not include “labor or overhead cost associated with such duplication,” according to section 119.001(1), Florida Statutes. Section 119.07(4)(d), Florida Statutes, provides that a reasonable service charge may be added if the request requires more information technology resources or supervisory assistance than normal. The reasonable service charge must reflect the cost actually incurred by the city and should not be imposed merely because a request requires the use of information technology.

Personal hard drive access to electronic records: Must the village of Palmetto Bay allow access to its copyrighted and licensed database which includes bank account information and social security numbers for copying directly to a hard drive provided by an individual requesting public records?

AGO 2013-07: No. The village does not have to allow direct access to electronic records via the personal hard drive of a requestor. Section 119.01(2)(f), Florida Statutes, requires agencies that maintain electronic records to provide such records that are not exempt from public disclosure. Licensed software qualifies as a trade

secret and is exempt from disclosure under section 119.071(1)(f), Florida Statutes. Social security numbers and similar information are also exempt from disclosure. Public Records Law does not dictate the manner in which electronic records may be accessed. Thus, the village is not required to allow a requestor to use his personal hard drive to directly access electronic records, but must accommodate the request while protecting exempt and confidential information.

Sunshine Law exemption for derivative claims: Does the provision of section 286.011(8)(e), Florida Statutes, requiring the disclosure of transcripts of private meetings between a state entity and its attorney upon conclusion of litigation apply when the initial litigation has concluded, but a close relative of the initial plaintiff seeks information to assist in a subsequent derivative claim?

AGO 2013-13: No. The statute does not provide for a continuation of the exemption to deal with derivative claims. Section 286.011(8)(e), Florida Statutes, requires transcripts of private meetings between a government entity and its attorney to “be made part of public record upon conclusion of the litigation.” The factual situation that precipitated this opinion involves a lawsuit that has been dismissed with prejudice.

A dismissal with prejudice signals the conclusion of litigation. Florida courts have opined that section 286.011(8), Florida Statutes, should be interpreted narrowly, and it does not appear that an exemption for derivative claims is included in the statute.

Sunshine Law and town employment contracts: In those situations where the Town Commission of the town of Inglis, as the contracting authority, wishes to enter into an employment agreement which must be reduced to writing under applicable Florida law, does the Sunshine Law require that the proposed written contract be presented to, considered and approved by the Commission at a duly noticed Sunshine Law compliant meeting?

AGO 2013-14: No. The Sunshine Law does not require proposed written employment contracts to be presented

to, considered or approved at a Town Commission meeting. Nothing in the charter or ordinances of the town of Inglis requires written contracts to which the town is a party to be reviewed or discussed at public meetings. If a contract is approved at a public meeting, it qualifies as a public record under Chapter 119, Florida Statutes.

Sunshine Law exemption for arbitration: Does the exemption provided in section 286.011(8), Florida Statutes, allow a closed attorney-client session between the city commission and its attorney to discuss settlement negotiations or strategy related to expenditures for pending mandatory and binding arbitration to which the city is presently a party?

AGO 2013-17: No. Mandatory and binding arbitration does not qualify as pending litigation for purposes of section 286.011(8), Florida Statutes. A city may conduct closed meetings with its attorney if it is a party to pending litigation before a court or administrative agency. Since courts interpret the exemptions in section 286.011(8), Florida Statutes, very narrowly, it does not appear that arbitration will qualify for an exception. Thus, the city commission and its attorney may not hold closed meetings to discuss arbitration strategies.

Sunshine Law exemption and “conclusion of litigation:” Would the release of attorney-client transcripts from meetings held pursuant to section 286.011(8), Florida Statutes, prior to the “conclusion of litigation” constitute a violation of that statute?

AGO 2013-21: No. Releasing attorney-client transcripts prior to the “conclusion of litigation” would not violate section 286.011(8), Florida Statutes, which creates an exemption of transcripts of such meetings during litigation, but requires the transcripts to be released as public record upon the conclusion of the litigation. The statute was created as a tool for governments to use in keeping their litigation strategies private and should not be interpreted as forbidding the release of documents prior to the conclusion of a case. The release of transcripts or documents following a settlement but prior to the conclusion of litigation constitutes a waiver of the exemption.

ATTORNEY GENERAL OPINIONS

Sarasota faced four suits in 2013

SARASOTA – The city of Sarasota spent over \$80,000 on lawsuits alleging Sunshine Law violations in 2013, according to the Sarasota Herald-Tribune. The lawsuits claim that city officials have repeatedly violated Florida’s Open Meetings Law this year.

In April 2013, the city was sued over Sunshine Law problems stemming from the Homeless Advisory Task Force organized by City Manager Tom Barwin, according to the paper. In August 2013, the city was sued in connection with the planning of the State Street Garage development project.

In October 2013, Citizens for Sunshine filed two lawsuits against the city. The nonprofit group and the city attorney’s office reached a settlement

in early October, ending the city’s Development Review Committee’s private “pre-meeting” sessions, the paper reported.

The other lawsuit alleged that city commissioners and other city officials met privately with local business owners to discuss homelessness, according to the paper. Citizens for Sunshine also named two commissioners individually in the lawsuit.

The city and one commissioner entered into settlement agreements with Citizens for Sunshine. One commissioner maintains she did not break the law and will continue defending the lawsuit, the paper reported. The estimated cost of this lawsuit alone is \$50,000.

Source: Sarasota Herald-Tribune

Orange County officials deleted messages in ‘textgate’ scandal

ORANGE COUNTY – Four Orange County commissioners and mayor Teresa Jacobs were accused of violating Florida’s Public Records Law when they deleted text messages regarding government decisions, according to the Orlando Sentinel.

Following an investigation into the “textgate” scandal, the Florida Department of Law Enforcement and the state attorney did not file any criminal charges, but imposed a \$500 fine on the officials, the paper reported. All officials agreed to pay the fine.

According to an investigation conducted by the Orlando Sentinel, many government organizations deleted text

messages that would likely be considered public records. Through public records requests, the Sentinel determined that Orange County commissioners deleted government-related text messages.

Last year, Orange County commissioners blocked a referendum for paid sick time, according to the Sentinel. Public records indicate that several of the commissioners had been in contact with lobbyists who opposed the referendum, but text messages concerning the matter had been deleted or lost.

Orange County spent approximately \$120,000 in legal fees on the “textgate” scandal, the paper reported.

Source: Orlando Sentinel

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Access to county court records often delayed

ORLANDO – The Associated Press and news organizations throughout the state of Florida found that access to court records are systematically delayed in some counties. The AP and several newspapers made records requests in each county to determine whether each clerk of court was complying with a new Florida law requiring all personal information to be redacted, the AP reported.

Hard copies of two criminal and two civil cases between a week and

six months old were requested in each county and any delays were recorded, according to the AP. In many counties, the news organizations found that redacting personal information caused delays in the release of records.

In half of the counties, access to the records was delayed, according to the AP. The delays were caused either because personal information needed to be redacted or the

COURTS

TPD altered police reports for media

TALLAHASSEE – The Tallahassee Police Department (TPD) released different versions of police reports to media and non-media requesters, according to an investigation done by the Tallahassee Democrat.

Democrat reporters who identified themselves as media requested 10 police reports from the TPD, while staff members who did not identify themselves as media requested the same reports and compared the content in each report, the Democrat reported. The investigation revealed that the TPD redacted much more information on reports given to the media.

Officer Dave Northway, spokesperson for the TPD, said much of the information was redacted to protect ongoing investigations, according to the Democrat. The TPD acknowledged that they made some mistakes in altering the reports.

Reporters conducted this experiment after routinely receiving heavily redacted police reports, according to the Democrat.

Law enforcement agencies are required under Florida’s Public Records Law to disclose general information regarding a crime, but there are many exemptions that allow agencies to exercise their discretion on what to disclose, the Democrat reported.

Source: Tallahassee Democrat

records could not be found. Review for personal information caused delays in over one-fifth of the total requests, the AP reported.

The law requiring the removal of personal information went into effect last year. All 67 counties are also required to convert all records to electronic copies this year, according to the AP.

Source: The Associated Press

Port St. Lucie officials charged with records violations

PORT ST. LUCIE – Three Port St. Lucie city officials have been charged with violating Florida’s Public Records Law, the Scripps Treasure Coast Newspapers reported.

Councilman Ron Bowen has been charged with a second-degree criminal misdemeanor relating to discussions about the dismissal of City Manager Greg Oravec. Bowen allegedly used City Attorney Roger Orr as an intermediary to discuss Oravec’s dismissal with mayor JoAnn Faiella, the paper reported.

Faiella and Councilwoman Shannon Martin have been charged with civil infractions because they deleted text messages regarding Oravec’s dismissal, according to the paper. Faiella is also charged with discussing the matter with Bowen outside a public meeting, which violates Florida’s Sunshine Law. Both Faiella and Martin must pay fines if convicted, the paper reported.

Martin apologized for her actions and said she would pay the fine, according to the paper. Martin said the city is reevaluating its telecommunications policy in light of the charges.

Source: Scripps Treasure Coast Newspapers

Judge revises order on release of documents in murder trial

JACKSONVILLE – A circuit judge revised his previous order which required judicial review of all documents in a murder trial before they were released, according to The Florida Times-Union.

Judge Russell Healey changed the order to provide all documents to the public within 30 days, the paper reported. Either party may object to releasing certain material. In that case, the objections will be considered at a hearing, according to The Times-Union.

George Gabel, attorney for The Times-Union and First Coast News, said that while he supports the time limit, he feels that 30 days is too long, the paper reported. He said it is unclear how the media will be involved in the hearings on unreleased documents.

Frank Denton, editor of The Times-

Union, said the revised order may still cause unreasonable delay in the release of information on the case.

“We hope the court will consider a more reasonable limit on the delay so we can continue to inform the public fully on this important trial,” Denton told The Times-Union.

The initial plan for review of all material in the case followed the release of some of the defendant’s letters sent out while he was in jail. Healey said he wanted to control what the media reports to ensure the defendant receives a fair trial, according to the paper.

The review of all case materials drew criticism from local media. They argued that such extensive review violates Florida’s Public Records Law and asked Healey to reconsider the order.

Source: The Florida Times-Union

Newspaper sues Department of Homeland Security

WASHINGTON, D.C. – The Washington Times sued the Department of Homeland Security for allegedly seizing one of its reporter’s notes in an unrelated search warrant, The Washington Times reported.

Reporter Audrey Hudson’s notes were taken in a search warrant of her home, seeking weapons allegedly owned by her husband, according to the Times.

Hudson’s notes contained information obtained through Freedom of Information Act requests and interviews with confidential sources, The Times reported. The notes dealt with a series of stories Hudson wrote revealing problems within the Department of Homeland Security’s Federal Air Marshal Service.

During the search, law enforcement asked Hudson whether she was the reporter

who wrote stories on the Air Marshal Service, The Times reported.

According to The Times’s motion, the newspaper has “substantial reason to believe” that Hudson’s notes have been distributed within several government agencies.

The notes also contained a “memorandum from Hudson to an editor at

The Washington Times outlining Hudson’s concern that some of her confidential sources were being retaliated against,” the motion said.

“There was no basis for the law enforcement officers to open and inspect the file folders during the search, much less to seize the content,” the motion argued.

Source: The Washington Times, Hudson v. US Department of Homeland Security, No. WDQ-MC-0570

REPORTER’S PRIVILEGE

THE BRECHNER REPORT

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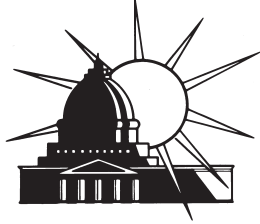
Correction

In an earlier version of the January 2014 issue, The Brechner Report erroneously stated that a Sarasota commissioner admitted to a Sunshine Law violation. While the commissioner settled a pending lawsuit with Citizens for Sunshine, the settlement did not contain an admission of any violation of the Sunshine Law. The Brechner Report regrets the error.

THE BRECHNER REPORT

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Complete courtroom access policies essential

The phrase “cameras in the courtroom” used to evoke images of swirling lengths of camera cords, blinking red lights, and dramatic soundbites for the evening news. With advances in technology, traditional cameras have become far less intrusive, and the methods for reporting live from the courtroom have expanded. The “print” reporter—if there is really such a thing anymore—is no longer confined to after-the-fact coverage. With smartphones, iPad, laptops, and similar devices, anyone can deliver real-time coverage of legal proceedings.

As journalists work to provide the coverage their audiences demand in a non-stop news cycle, new legal questions abound. Are electronic devices even allowed in the courtroom? What types of information can be distributed—is there a

The Back Page

By Christina Locke Faubel

Judges, attorneys, and parties must also ask important questions. Will the coverage generate prejudicial publicity? Will the tapping of a keyboard be too distracting? Should the public and the press be afforded the same latitude in using devices in the courtroom?

So far, the prognosis for unfettered, live coverage from courtrooms with mobile devices is grim. The good news is that live, text-based reports offer a middle ground that allows journalists to deliver timely coverage that doesn’t have the physical impact a camera does on the proceedings, and eliminates many of the concerns that accompany audio-visual coverage.

There are only a handful of judicial opinions on the issue, and few states have modified their existing “cameras in the courtroom” rules to contemplate mobile devices. While federal court opinions have been largely unfavorable to coverage, in practice, there have been several successful experiments with live coverage in both civil and criminal proceedings. In state courtrooms, coverage has also become more commonplace. During the 2011 trial of Florida mother Casey Anthony, for example, reporters sent Tweets from the courtroom and set up a live chat with readers. There was even a best-selling app available on iTunes for those who want speedy access to coverage.



Christina
Locke Faubel

We are at a crossroads of sorts in terms of live coverage with mobile devices. There isn’t much law in the form of opinions, rules, or statutes, but there have been multiple instances of live-coverage with no major disruptions or snafus. What does this mean for journalists?

This is a crucial time to persuade the judiciary and the public that this type of coverage is a good thing. Building rapport and even educating judges and court administrators about the process, the technology, and the benefits of live coverage are key first steps in ensuring that resulting laws don’t inhibit coverage. This education and relationship-building can come through personal contact or more formal channels.

A model court policy on mobile devices—similar to the one I propose in the Fall/Winter 2013 issue of the Reynolds Courts & Media Law Journal—is another way to present courts with a comprehensive, access-friendly perspective on the issue. Such a policy lays out assumptions about coverage (i.e., text-based transmissions are presumptively permitted); defines who falls under the definition of “media”; provides guidelines for usage; and encourages other departments, such as information technology, to be cognizant of the infrastructure needed to carry out such a policy.

Some parting, practical advice for journalists who manage to get permission to live-blog, Tweet, or otherwise send live coverage of a legal proceeding from the front row: 1. Give credit where credit is due. If a judge gets creative with the existing rules to allow coverage, don’t be afraid to acknowledge it. 2. Follow the rules. Even if you don’t like them. Defying the judge’s rules is a sure way to not be invited back with iPad in hand. Challenge the rules in the proper channels, of course, but follow them in the meantime. 3. Get chatty. Consider incorporating a chat function into your live coverage. Public education and participation is a huge argument in favor of coverage (read the Supreme Court’s opinion in *Richmond Newspapers v. Virginia* for some great examples). Interactive components to your coverage might help convince a reluctant judge.

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