
THE BRECHNER REPORT

Volume 39, Number 1 ■ A monthly report of mass media law in Florida
Published by The Brechner Center for Freedom of Information ■ College of Journalism and Communications ■ University of Florida

January 2015

Gov. Scott used private email for state business

TALLAHASSEE – Following his reelection in November, Gov. Rick Scott released emails indicating he used his private email account to discuss state business, according to The Associated Press.

Scott previously has said he only used a Google email account for family communication and never for state business, the AP reported.

“If anybody sends me an email to my private account, I do the right thing,”

said Scott in August. “I try not to use my personal email for anything.”

John Tupps, spokesman for Scott, acknowledged after the release of emails to the AP that there were some occasions

where the governor did not forward emails, according to the AP. A few emails indicate Scott’s opinion on vetoing messages and bill signing

letters.

Scott’s administration released the emails more than three months after the

AP requested them, the AP reported.

Florida’s Public Records Law does not forbid public officials from having a private email account, but would punish an official for not turning over personal emails as part of a public records request.

Scott’s Google account has been at the center of a lawsuit filed by Tallahassee attorney Steven Andrews, according to the AP. A Florida judge permitted Andrews to ask Google about private email accounts, and Scott has been fighting the subpoena.

Source: *The Associated Press*

**ACCESS
RECORDS**

Farmers sue over milk labels

CALHOUN COUNTY – A Florida panhandle dairy filed a lawsuit against the state government over labeling requirements on milk, according to WFSU News.

Mary Lou and Paul Wesselhoeft own Ocheesee Creamery in

Calhoun County and sell skim milk without adding any synthetic vitamins, WFSU reported. The state government, however, classifies their milk as a “milk product” and requires the Wesselhoefts to label their skim milk with the words “vitamins removed.”

The Wesselhoefts’ lawyer said the

label requirements violate their First Amendment rights because the government is compelling them to misrepresent their product, according to WFSU. The

Wesselhoefts are asking the judge to allow them to continue selling their milk without the label.

The Florida Department of Agriculture released a statement in response to questions about the lawsuit stating that it “is the responsibility of the Florida Department of Agriculture and Consumer Services to safeguard consumers, and that includes ensuring all milk meets quality standards required by law.”

Source: *WFSU News*

**FIRST
AMENDMENT**

Sarasota lawsuit to go to trial

SARASOTA COUNTY – The Sarasota County Commission likely will head to court to resolve a lawsuit attempting to determine the legal status of a local economic development commission, according to the Sarasota Herald-Tribune.

Nonprofit Citizens for Sunshine filed the lawsuit against the Economic Development

Corporation of Sarasota County in 2009, claiming the EDC was not complying with Florida’s Open Meetings or Public Records Laws, the paper reported.

Citizens for Sunshine offered the county a settlement offer, but commissioners unanimously rejected it, according to the paper. Most commissioners favored paying \$75,000 to settle the case, but could not vote in favor of the offer because EDC officials were not at the meeting and strongly opposed the offer.

Attorneys for Citizens for Sunshine offered the settlement to the county in October, after a similar case was decided in Brevard County, the paper reported. The organization said it is prepared to go to trial following that ruling.

Source: *Sarasota Herald-Tribune*

**OPEN
GOVERNMENT**

IP addresses to be released

ORLANDO – A judge ruled Orange County must release the IP addresses of computers with access to the mayor’s Dropbox account, according to the Orlando Sentinel.

Organize Now, a citizens group, sued Orange County for access to Mayor Teresa Jacobs Dropbox account, the paper reported.

Organize Now initially asked for the IP addresses to determine who had access to the file-sharing account, according to the paper. The county redacted the IP addresses in what they claimed was

a security precaution.

Jacobs claimed

only she and her staff had access to the account, the paper reported. Stephanie Porta, executive director of Organize Now, said she wanted to see whether people outside county staff may have access to the account.

Judge Robert Egan found that IP addresses are subject to Florida’s Public Records Law, according to the paper. The county must release the addresses within 30 days of his ruling.

Source: *Orlando Sentinel*

**ACCESS
RECORDS**

Florida Supreme Court rules on redistricting documents

TALLAHASSEE – The Florida Supreme Court released documents used in the redistricting case, following its ruling that the secret documents should be released to the public due to the overriding public interest in openness to judicial proceedings and records.

The trial court had previously ordered the production of 538 pages of documents subpoenaed in a challenge of the constitutionality of the redrawing of congressional district maps, according to the opinion.

The Supreme Court ruled Pat Bainter and his political consulting firm, Data Targeting, Inc., waited too long to make a First Amendment privilege claim that the documents should be kept sealed, the opinion stated. The Court observed that Bainter and his firm did not assert that claim until the day after they were held in contempt for failing to produce the documents.

The delay was “inexcusable,” according to the opinion. “We simply do not countenance and will not tolerate

actions during litigation that are not forthright and that are designed to delay and obfuscate the discovery process,” the opinion stated.

The Supreme Court agreed with the trial court that these documents were important evidence, which indicated that Bainter and others conducted a secret, separate redistricting process from the process “championed by the Legislature” in order to favor Republican and incumbent candidates, according to the opinion.

“Not only is there no legally valid reason at this time for allowing these documents or the testimony admitted at trial under seal to be hidden from public view, but this Court is committed to the principle that ‘all trials, civil and criminal, are public events and there is a strong presumption of public access to these proceedings and their records,’” the opinion stated.

Source: Bainter v. League of Women Voters, No. SC12-1200, Orlando Sentinel

Foundation profits from records suits

PALM BEACH COUNTY – The nonprofit Citizens Awareness Foundation may be less interested in obtaining public records and educating citizens on their rights to public records and more interested in making money on public records lawsuits, according to an investigation by the Florida Center for Investigative Reporting.

The nonprofit organization was created to “empower citizens to exercise their right to know,” according to its mission statement.

Citizens Awareness Foundation and the O’Boyle law firm recently set up in the same office building, the FCIR reported. A review of court records and internal communications reveal that the two entities share personnel, funding and a mandate to file as many public records lawsuits as they can, according to the FCIR.

The foundation’s director, Joel Chandler, resigned over concerns that the coordination between the law firm and the foundation “may be criminal, fraudulent and unethical,” according to an affidavit Chandler filed.

The foundation and its sister group, Our Public Records LLC, have filed more than 140 lawsuits in 27 counties since January, according to the FCIR. A lawyer with the O’Boyle law firm filed each one of these cases.

“I didn’t want to be involved in something where we file lawsuits just to file lawsuits. I was assured I would have sole discretion about who to litigate and which law firm to use,” said Chandler.

Chandler told the FCIR the foundation was filing so many lawsuits that he wasn’t able to approve them all. Some lawsuits were filed in his name without his knowledge, the FCIR reported.

Chandler resigned on June 30 and offered to help a defendant in a suit the foundation filed, according to the FCIR. The foundation sued Chandler for breach of contract and violation of duty.

Since Chandler’s resignation, the foundation has filed 70 more lawsuits around the state.

Source: Florida Center for Investigative Reporting

Lakeland settles suit on charging flat fee for records

LAKELAND – The city of Lakeland recently settled a public records lawsuit for \$95,000 plus legal fees, ultimately totaling at least \$160,000, according to The Ledger (Lakeland).

Public records advocate Joel Chandler filed a lawsuit against the Lakeland Police Department in 2010, alleging that charging a flat fee for public records was improper, the paper reported. The LPD charged \$23.50 for each request rather than providing the records for free or basing the fee on the amount of records requested.

The LPD agreed to abolish the flat fee policy and to arrange for employees to work with public records to take training classes led by the First Amendment Foundation as

terms of the settlement, according to the paper. The city also agreed to pay Chandler’s legal fees.

Chandler told the city, before filing the lawsuit, that he would not sue if the LPD ended their flat fee policy, the paper reported.

“A lot of times, it (fulfilling requests) should have been 15 cents,” Chandler said. He said the policy has been in place for “years and years. The policy deliberately milked money out of the citizens.”

In 2013, the city spend over \$225,000 on legal fees for several city employees involved in a grand jury investigation over the LPD’s public records policies, according to the paper. Much of those fees went towards attempting to keep the grand jury findings sealed.

Source: The Ledger (Lakeland)

ACCESS
RECORDS

THE BRECHNER CENTER

2014 FREEDOM OF INFORMATION REPORT

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

Police chief resigns after presentment unsealed

LAKELAND — Lakeland Police Chief Lisa Womack resigned following the release of the grand jury presentment and a no-confidence vote by Lakeland Police Department (LPD) employees, according to The Ledger (Lakeland).

The presentment, released after being sealed for almost a year, was highly critical of many officials, including Womack, The Ledger reported. The presentment suggested the chief should be dismissed and criticized LPD public information

officer Ann Dinges and LPD lawyer Roger Mallory. The presentment also questioned city manager Doug Thomas for not evaluating Womack in writing.

The grand jury investigation began after The Ledger published a series of articles regarding its difficulty obtaining records from the LPD, the paper reported. In one of the articles, Womack told a reporter that the LPD often plays a “cat-and-mouse” game with the media over records requests.

The grand jury conducted their own investigation and heard from over 20 witnesses on the difficulty of obtaining records from the LPD, according to The Ledger. The State Attorney’s Office also used undercover officers to request records to illustrate that such requests were not handled properly.

The 2nd District Court of Appeal ruled the presentment should be unsealed, The Ledger reported. City officials spent approximately \$225,000 in attorney’s fees to keep the presentment sealed.

Source: The Ledger (Lakeland)

**ACCESS
RECORDS**

Court upholds Sunshine Law violation

JACKSONVILLE — The 1st District Court of Appeal upheld a ruling that Jacksonville violated Florida’s Sunshine Law during Police and Fire Pension Fund negotiations, according to The Florida Times-Union.

The city and fund had asked the appellate court to overturn a ruling by Circuit Judge Waddell Wallace that the city violated Florida’s Sunshine Law during private pension negotiations in 2013, the paper reported.

Wallace found the meetings weren’t

open to the public, and were held without notice to the public and without taking minutes, all of which violate the Sunshine Law, according to the paper.

The three judges hearing the appeal unanimously agreed with Wallace’s ruling.

The court rejected the city’s argument that the talks did not violate the law because the Sunshine Law only applies to collective bargaining, and not pension discussions, the paper reported.

“I think the Sunshine Law recognizes that when there’s a negotiation going on between a public employer and their employees that there’s another real party of interest there... and that’s the public,” Appeals Court Judge L. Clayton Roberts told attorneys during oral argument.

The pension fund has asked the judge for a rehearing, according to the paper. The city decided not to appeal the ruling.

Source: The Florida Times-Union

**ACCESS
MEETINGS**

Florida Supreme Court orders online access

TALLAHASSEE — In March, the Florida Supreme Court released an administrative order structuring a plan for public access to online court records.

The court had previously imposed a “moratorium on access to electronic court records to address concerns about sensitive and confidential information contained in these records,” according to the order.

The order outlines a statewide pilot program that each county will participate

in, according to the order. Each county clerk of court must get approval from the Florida Courts Technology Commission and comply with all access requirements in a 90-day monitoring period.

The court also established a standards and matrix, which provides varying levels of access to court records depending on a user’s credentials, the order stated. The standards and matrix were based on the current online access program in Manatee County.

The court supervised the Manatee County program from 2007 to 2011 and determined that the program was successful in granting access while protecting confidential information, according to the order.

The public will have access to a “replicated and redacted” version of the record, according to the standards outlined in the order.

Source: The Florida Times-Union, Administrative Order No. AOSC14-19, Supreme Court of Florida

**ACCESS
RECORDS**

Record number of exemptions passed in 2014

TALLAHASSEE – The following is a summary of 22 Public Records and Open Meetings Law exemptions passed in 2014. 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/HB 115 University Direct Support Organizations: Creates an exemption for portions of meetings of a university direct support organization when the board discusses research funding proposals or support programs. (Pigman, R-Sebring).

CS/HB 177 Prepaid Wireless E911 Fee: Exempts all information from providers of prepaid wireless E911 services in returns, reports, accounts or declarations received by the Department of Revenue. (Steube, R-Sarasota).

CS/SB 226 Automated License Plate Recognition Systems: Creates an exemption for personal identifying information obtained through the use of automated license plate recognition systems and the images obtained through the use of such systems. Allows disclosure of the information to a criminal justice agency under certain circumstances and to the person whom the vehicle is registered unless it is a part of an ongoing criminal investigation. (Brandes, R-St. Petersburg).

CS/SB 238 Public Defenders – Names of Spouses: Expands the current exemption of home addresses of public defenders to include the names of their spouses and children. (Joyner, D-Tampa).

CS/SB 256 Forensic Behavioral Health Evaluations: Creates an exemption for forensic behavioral health evaluations filed with a court. (Garcia, R-Hialeah).

CS/SB 280 Treatment-Based Drug Court Programs: Creates an exemption for information relating to participants in treatment-based drug court programs and to persons being considered for treatment. (Garcia, R-Hialeah).

CS/SB 366 Trade Secrets – Computers: Expands the current exemption for trade secrets relating to computers, systems and networks held by an agency to also exempt trade secrets relating to electronic devices. (Brandes, R-St. Petersburg).

CS/SB 390 Department of Health – Home Addresses: Creates an exemption for the home addresses, telephone numbers, dates of birth and photographs of current or former Department of Health employees whose duties include investigation or prosecution of complaints filed against healthcare practitioners, the inspection of licensed facilities, or the determination or adjudication of eligibility for social security benefits. The exemption also applies to the spouses and children of the employees and includes the names and locations of schools and day care facilities the children attend. (Hays, R-Umatilla).

CS/HB 415 Investigations – Office of Financial Regulations: Creates an exemption for records related to the examination or investigation of financial institutions without notice until the examination is complete or inactive. Certain information like personal identifying information of consumers will remain exempt even after the examination is complete or inactive. (Santiago, R-Deltona).

SB 520 Dental Workforce Surveys: Creates an exemption for all personal identifying information contained in workforce surveys held by the Department of Health completed by dentists and dental hygienists. (Richter, R-Naples).

CS/HB 525 Personal Identifying Information – Concealed Weapons Permits: Creates an exemption for personal identifying information for those who have applied for a concealed weapons permit held by a tax collector. (Grant, R-Tampa).

CS/HB 711 Alzheimer's Disease Research Grant Advisory Board: Creates an exemption for applications provided to the Alzheimer's Disease Research Grant Advisory Board within the Department of Health for Alzheimer's research grants and all records generated by the board while reviewing such applications. Also creates an exemption for those portions of board meetings during which the applications are discussed, requiring that closed meetings be recorded and that the recording is subject to the same exemptions mentioned above. The board's final recommendations will be subject to disclosure. (Hudson,

R-Naples).

CS/HB 775 Proprietary Confidential Business Information – State Boxing Commission: Creates an exemption for "proprietary confidential business information" held by the Florida State Boxing Commission that is treated by a boxing promoter as private in that disclosure would harm the promoter's business information. This information includes the number of ticket sales for a match, the amount of gross receipts after a match, trade secrets, business plans, internal auditing controls and reports of internal auditors, and reports of external auditors. (Hutson, R-Palm Coast).

CS/HB 993 Animal Researchers – Personal Identifying Information: Creates an exemption for personal identifying information of those persons employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research or are engaged in activities related to animal research. The exemption includes animal records, animal care and treatment records, research protocols and approvals, purchase and billing records related to animal research or activities, animal care and use committee records and facility and laboratory records related to animal research or activities. (Cummings, R-Orange Park).

CS/SB 1140 Emergency Planning: Creates an exemption for information furnished by a person or business to the Division of Emergency Management for emergency planning purposes. (Hayes, R-Umatilla).

SB 1262 Insurance Flood Loss Model: Expands the exemption for trade secrets used in designing and constructing a hurricane flood loss model to include trade secrets related to flood loss models. Also exempts meetings at which such trade secrets are discussed. (Brandes, R-St. Petersburg).

CS/SB 1278 Examinations – Office of Financial Regulation: Creates an exemption for informal enforcement actions by the Office of Financial Regulation until the action is completed or inactive. Some information that would impair the safety and soundness of the financial institution will remain exempt. Also creates an exemption for trade secrets held by the Office of Financial Regulation. (Richter, R-Naples).

LEGISLATIVE SESSION REPORT

Few AGO opinions address Public Records Law

TALLAHASSEE – Attorney General Pam Bondi's office weighed in on only two open government issues in 2014, one concerning contracts with public agencies and the other regarding the home address exemption to Florida's Public Records Law.

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

Contracts with public agencies:

Does a contract for services with a public agency, regardless of the nature of the services, automatically result in the private contractor being subject to Florida's Public Records Law?

AGO 2014-06: No. A private contractor is not automatically subject to the Public Records Law just by entering into a contract with a state agency. Section 119.0701, Florida Statutes, applies to contractors who enter into contracts with public agencies and are acting on behalf of a public agency in providing the contracted services. Therefore, the nature and scope of the services provided determine whether the contractor is acting on behalf of an agency and subject to the requirements of the statute. The statute treats a private contractor as taking the

place of the public agency, which requires more than simply entering into a contract with the public agency. Section 119.0701 requires both entering into a contract and acting on behalf of a public agency in order to apply to private contractors.

Property appraiser public records exemption: Does a property appraiser have to honor the public records exemption for the home address of a qualifying individual who is not the owner of the property, and does the property appraiser have to redact the site address of the property if other personal identifying information is redacted?

AGO 2014-07: Yes. Section 119.0701(4)(d), Florida Statutes, exempts the home address, telephone numbers and other personal information of certain state employees. This exemption applies regardless of whether they own the property being appraised. A property appraiser is required to comply with any request for an exemption from a qualifying individual. The exemption applies to all public records maintained by the appraiser's office. The legislative intent for this

exemption is to ensure the privacy and safety of specified individuals, so the appraiser must redact the site address of the property if other personal identifying information is redacted.

Sunshine exemption for public hospital strategic plans: Would evaluations for possible sale or lease of a public hospital qualify as a "strategic plan," which would be exempt under Florida's Sunshine and Public Records Laws?

AGO 2014-10: No. An evaluation for purposes of the sale or lease of a public hospital does not qualify as a "strategic plan" for the operation of the hospital

as defined in section 395.3035, Florida Statutes. The definition of "strategic plan" does not include records that describe existing

hospital operations that would implement or execute provisions of a strategic plan. Additionally, the evaluation process of a public hospital requires public notice and public hearings pursuant to section 155.40(5), Florida Statutes. The legislative intent for this section of the statute was to ensure that the evaluation of a public hospital be open to the public.

ATTORNEY GENERAL OPINIONS

LEGISLATIVE REPORT CONTINUED

CS/SB 1300 Proprietary Confidential Business Information – Office of Insurance Regulation:

Creates an exemption for proprietary confidential business information held by the Office of Insurance Regulation relating to insurer solvency. Proprietary confidential business information includes trade secrets and other information owned or controlled by an insurer which is intended to be and is treated as private in that disclosure would cause harm to the insurer's business operations and is not otherwise readily available. (Simmons, R-Altamonte Springs).

CS/SB 1320 Family Trust Companies – Office of Financial Regulation: Creates an exemption for certain records relating to family trust companies held by the Office of Financial Regulation and stipulates that willful disclosure of such information is a third degree felony. The exempt information includes personal identifying

information contained in records relating to registration, application or certification, examinations of family trusts and reports of such examinations. Names of shareholders or members and emergency cease and desist orders are also exempt. Allows for disclosure under certain specified conditions. (Richter, R-Naples).

CS/SB 1526 Data Breach

Notifications: Creates an exemption for all information received by the Department of Legal Affairs pursuant to the requirement that they be notified of all breaches of data security. Also exempts records relating to investigations of such breaches held by the department or a criminal justice agency. Allows for disclosure under certain specified conditions during the investigation, but personal information, computer forensic reports, information revealing data security weaknesses, and proprietary business information is exempt even after the investigation is complete.

(Thrasher, R-St. Augustine).

SB 1700 Personal Information – Compassionate Use Registry: Creates an exemption for the identifying information of physicians and patients contained in the registry allowing physicians to prescribe low-THC marijuana to certain patients. Allows for disclosure of such information under certain specified circumstances. (Bean, R-Jacksonville).

HB 7007 Personal Identifying Information – Toll Facilities: Expands the exemption for personal identifying information held by the Department of Transportation, a county or an expressway authority for the purpose of paying, prepaying or collecting tolls to also include cities collecting such information. (H. Transportation and Highway Safety Subcommittee)

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

Redistricting documents released

TALLAHASSEE – The Florida Supreme Court ruled that sealed documents used in the redistricting case should be released to the public.

The trial court had previously ordered the production of 538 pages of documents subpoenaed in a challenge of the constitutionality of the redrawing of congressional district maps, according to the court opinion. One of the parties refused to release the documents and challenged their release to the Florida Supreme Court.

Leon Circuit Judge Terry Lewis closed the trial after the Florida Supreme Court ordered that the emails and other documents produced by Republican consultant Pat Bainter must be disclosed in court, according to the Democrat.

The Florida Supreme Court ultimately concluded these documents were important evidence and released them to the public.

The documents indicated that many Republican legislators instructed people to submit “public” maps, which were actually prepared by party operatives in order to maintain majority in the legislature, according to the Orlando Sentinel.

The case stems from an accusation from the League of Women Voters and several other parties that Republican lawmakers illegally influenced the redrawing of voter district maps in 2012, the Democrat reported.

Source: Tallahassee Democrat, Tampa Bay Times, The Gainesville Sun, Bainter v. League of Women Voters, No. SC12-1200, Orlando Sentinel

EDC subject to records law

BREVARD COUNTY – A circuit court judge ruled that most records of the Economic Development Commission for Florida’s Space Coast (EDC) are subject to Florida’s Public Records Law, according to Florida Today.

Circuit Judge John Moxley Jr. ruled that the EDC’s documents are public records because the commission performs the government function of developing the local economy, the paper reported.

The ruling came after the lawsuit initiated by Brevard County Clerk of Court Scott Ellis when the EDC would not produce some files Ellis requested related to its business with technology company BlueWare Inc., according to the paper. The EDC argued that it was a private

agency and not subject to the Public Records Law.

Certain exemptions still apply to the EDC’s documents, the paper reported. Confidential information like trade secrets and business information from companies in the initial stages of negotiations with the EDC are exempt.

The EDC appealed the decision, according to the paper.

In response to Moxley’s ruling, the Brevard County Commission revised its

relationship with the EDC, the paper reported. The Commission approved a resolution requiring all exemption requests to be filed with the county manager and a grant agreement explaining that the EDC is a private corporation.

Source: Florida Today

**ACCESS
RECORDS**

State drops expressway charges

ORLANDO – A grand jury issued several indictments before dropping some charges in the Orlando-Orange County Expressway Authority investigation, according to the Orlando Sentinel.

Board member Scott Batterson, former state Rep. Chris Dorworth and Rebekah Hammond, Dorworth’s girlfriend and government liaison for the Florida Department of Transportation, were charged with violating Florida’s Public Records Law, the paper reported.

The indictment alleged that Dorworth and Hammond acted as “conduits” between expressway board members, including Batterson, to discuss board matters in private, according to the paper.

The state dropped charges against both Hammond and Dorworth, according to the paper. A county judge ruled the Sunshine Law should not be applied to private citizens when dismissing Dorworth’s charge.

Batterson was also found guilty of offering a \$5 million-a-year contract to a consultant in exchange for hiring his friends, the paper reported. He pleaded no contest to the Sunshine Law charge.

Source: Orlando Sentinel, The Associated Press

**ACCESS
MEETINGS**

Judge rules blind trusts law constitutional

TALLAHASSEE – A judge upheld a Florida law that allows public officials to use blind trusts, according to The Associated Press.

Circuit Judge John Cooper ruled recently that the use of blind trusts did not violate the Florida Constitution’s 1976 amendment requiring public officials to disclose their finances, the AP reported.

Cooper reasoned that blind trusts allow the public and public officials to have the same information on an official’s financial holdings, “thus permitting an informed

opinion on whether conflicts of interests have or may in the future occur,” according to the opinion.

Cooper concluded that “the primary goal of the amendment is to impose disclosure of information, previously known only to the public official, so that the public will possess the same information that the public official or candidate has.”

Jim Apthorp, former Florida Gov. Reubin Askew’s chief of staff, filed the lawsuit, according to The Miami Herald.

The blind trust law, approved in 2013,

allows public officials to place their assets in the hands of a trustee who makes investment decisions without the official’s knowledge, the paper reported. The law was recommended by a statewide grand jury investigating public corruption.

Apthorp filed an appeal of the ruling, according to The Florida Times-Union.

Source: The Associated Press, The Miami Herald, Apthorp v. Detzner, Final Order Finding Florida Statute §112.1425 Constitutional, Case No. 2014-CA-1321, The Florida Times-Union

Court hears threats case

WASHINGTON, D.C. – The U.S. Supreme Court heard oral arguments on a social media First Amendment case, according to the Los Angeles Times.

This is the first case before the Supreme Court regarding threats and the limits of free speech on social media, the paper reported.

Anthony Elonis of Pennsylvania was convicted for posting threatening messages about killing his ex-wife and an FBI agent on Facebook, according to the paper. The trial judge said a reasonable person would have interpreted the messages as threats.

Elonis’s lawyer said the statements were protected and should be compared to rap lyrics, which are often violent

and graphic, the paper

FIRST AMENDMENT

reported. Elonis said the messages were not meant to frighten his wife and were just ways “to blow off steam.”

Courts have previously ruled “true threats” are not protected under the First Amendment, but trial judges have split over whether a defendant must intend to threaten the target, according to the paper.

Source: Los Angeles Times

City violated Sunshine Law

ST. PETE BEACH – An appellate court ruled the city of St. Pete Beach violated Florida’s Sunshine Law by holding private meetings to discuss a city growth plan, according to court opinion.

James Anderson challenged St. Pete Beach’s zoning ordinance that would have altered the city’s comprehensive plan and alleged that the city commission conducted a series of “shade” meetings to alter the comprehensive plan, the opinion stated.

The trial court ruled in favor of the city but the 2nd District Court of Appeal reversed, agreeing with Anderson’s claims.

The city argued that meetings to discuss the comprehensive plan strategy

were exempt under the Sunshine Law. The exemption allows for closed meeting to discuss actual settlement options of presently pending litigation. The court ruled that the pending litigation involving the comprehensive plan was on appeal and no longer subject to the exemption.

The appeals court ruled that “the city’s discussions exceeded the scope of the exemption for shade meetings” and so “it was error for the trial court to enter judgment in its favor and deny Anderson’s motion for summary judgment,” according to the opinion.

Source: Anderson v. City of St. Pete Beach, No. 2D12-5969

Private meeting raises concerns

PENSACOLA – A meeting between the president of the University of West Florida and the former faculty union president at the university may have violated Florida’s Sunshine Law, according to the Pensacola News Journal.

University president Judy Bense and former faculty union president Steve Belko met privately in Bense’s office, the paper reported. The meeting was organized the night before and it appears that Belko wanted to exclude Bense’s chief of staff, Kimberly Brown from seeing the email or attending the meeting.

Belko told the paper he would not discuss what the meeting was about, but said they came to an agreement and it was all in writing. The university has said

it doesn’t have any records of a written agreement between Bense and Belko, according to the paper.

Since Belko was in the process of leaving the university at the time of the meeting, the legality of the meeting is unclear, the paper reported. Florida’s Sunshine Law requires all collective bargaining negotiations between a chief executive officer and a bargaining agent to be open to the public and minutes must be kept.

The university maintains that since Belko was no longer acting in his official capacity as union president, the meeting was not subject to the Sunshine Law, according to the paper.

Source: Pensacola News Journal

Senate fails to pass NSA reform

WASHINGTON, D.C. – The Senate failed to pass legislation to reform the National Security Agency’s surveillance program, according to The Washington Post.

The failure to pass the USA Freedom Act represents a significant setback in the Obama administration’s goal to end the NSA’s widespread collection of American’s phone records, the paper reported.

The bill was two votes short of the required 60 votes to debate it on the floor, according to the paper. The bill was intended to place limits on the NSA’s surveillance practices, including requiring the NSA to request

specific data, reasonable suspicion that the phone number is tied to a foreign terrorist organization, and a panel of public advocates to keep the NSA and the surveillance court accountable.

A key provision of the existing USA Patriot Act expires June 1, the paper reported. That provision enables the NSA to gather records specific to individual investigations, but has also been used to validate mass collection of data.

The concern among politicians is that the debate over NSA reforms will be pushed to the last minute before Patriot Act provisions expire, according to the paper.

Source: The Washington Post

PRIVACY

THE BRECHNER REPORT

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

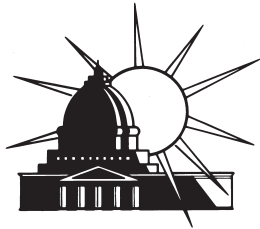
Sandra F. Chance, J.D., Exec. Director/Exec. Editor
Sarah Papadelias, Editor
Alana Kolifraith, Production Coordinator

The Brechner Report is published 12 times a year under the auspices of the University of Florida Foundation. The Brechner Report is a joint effort of The Brechner Center for Freedom of Information, the University of Florida College of Journalism and Communications, the Florida Press Association, the Florida Association of Broadcasters, the Florida Society of Newspaper Editors and the Joseph L. Brechner Endowment.

THE BRECHNER REPORT

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

January 2015



UF UNIVERSITY of
FLORIDA

Non-Profit Organization
U.S. POSTAGE
PAID
Permit No. 94
Gainesville, FL

Florida's Sunshine Law: officials, public need to learn it

For a second time within two years Lakeland taxpayers have been forced to cough up a princely sum for lawyers embroiled in a public-records dispute involving the city's police department. Last year, the city doled out \$225,000 in a failed effort to keep confidential a damaging grand jury report on the then-scandal-ridden department that determined LPD had wrongfully withheld documents the public was entitled to.

In the latest case, as chronicled by *The Ledger*, the city recently agreed to spend \$150,000 to settle a lawsuit brought by local open-government activist Joel Chandler. Chandler sued LPD back in March 2010 over the department's practice of charging \$23.50 as a "flat fee" for providing records, which, to Chandler, was excessive and unconstitutional under Florida law.

For years state law has allowed government agencies to charge 15 cents a page for copies, or an amount equating to the actual cost to duplicate the record. Thus, the government may legally charge for personnel time or computer-related costs, or both, in retrieving information. But, as Florida's "Government in the Sunshine" manual notes, the request must require "extensive" use of those resources on behalf of the government, and even then the fee must be "reasonable." Moreover, for covering personnel costs, the fee must be calculated using the salary of the lowest-paid person capable of retrieving the documents.

Barbara Petersen, president of the First Amendment Foundation, an open-government watchdog group in Tallahassee, told us that flat fees may be assessed in some cases. Court clerks, for instance, may charge \$1 per page for copies of court records under the law. Yet Petersen noted, "Only a few agencies have such authority, however, and the VAST majority fall under the general fee provisions." Presumably, that "vast" number includes the Lakeland Police Department.

The LPD's stance on this issue, as it has evolved over time, is troubling.

In April 2010 LPD responded to Chandler's lawsuit with a counter lawsuit, and its lawyer, Roger Mallory, first said the electronic records did not amount to a public record. That, however, is not the case. Florida courts have long held that electronic records are the same as paper documents.

At the same time, Mallory accused Chandler of playing "gotcha" with his request. "That's the game he was playing," the lawyer told *The Ledger* in April 2010. Yet state law is clear: people requesting government documents do not have to provide their names or the reason they want the records, and are under no obligation to answer if public officials ask for such information.

Then last week, Mallory told *The Ledger* that a consultant had suggested instituting the fee a decade or so ago because LPD was losing money on public records requests. It's unclear whether that meant the department was not charging at all, or not charging the amount it could under existing laws. It seems LPD would break even if it were charging for the actual costs to provide the records, as the law permits. In either case, Mallory's comment suggested LPD viewed this as a revenue-generator. Mallory, in last week's *Ledger* report, added, "Nobody ever complained about it [the flat fee] except Joel Chandler."

Perhaps no one did because few citizens understand their rights in learning what their government is up to. Such ignorance is lamentable, especially since Florida has one of the best public records laws in America. Every citizen must educate themselves about that, if only to help serve as a check on government authority.

But too often that ignorance extends to the custodians of the records as well.

"In my experience," Petersen said, "most violations of the public records law stem from a lack of information about the law's requirements, despite the fact that public officials take an oath of office that requires them to uphold the Constitution and laws of Florida, including our constitutional and statutory rights of access to government records." She added, "When a government agency loses an open government lawsuit — whether by settlement or by court opinion — the fees paid by the agency come from the public coffers. In other words, we the public are paying because those in government who are working for us have violated our rights."

The settlement says Petersen's group is slated to train LPD employees on complying with the law. After almost \$400,000 of taxpayers' money out the window, we can only say better late than never.

This column was written by The Ledger (Lakeland) Editorial Staff and originally appeared in the Nov. 25 issue of The Ledger.