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# THE BRECHNER REPORT

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January 2008

## Crist allows applicants seeking clemency to view their reports

TALLAHASSEE – Public testimony at the first meeting of the Commission on Open Government has prompted a change in the rules regarding access to clemency reports.

Applicants appearing before the Board of Executive Clemency are now able to receive their case analysis reports. The reports contain a summary of the offense, criminal and traffic history, background information on the applicant, and the Parole Commission's recommendation to the Clemency Board.

The Parole Commission prepares the reports, which were previously confidential and provided only to members of the clemency board. Gov. Charlie Crist, pursuant to a statute granting him the authority to release confidential information, announced that the reports will now be available to the applicant or representative prior to the hearing date.

"Individuals applying for clemency should have the same information available to them that decision makers on the Board of Executive Clemency have," Crist said. "I am thankful that the

Commission on Open Government has brought this issue to the forefront."

Gov. Crist appointed the Commission on Open Government in June 2007 to review Florida's open government laws and make recommendations for changes. During its first meeting in August 2007, two witnesses testified about the secrecy surrounding the clemency process.

### ACCESS RECORDS

Indian Harbor Beach social worker Lynda Markham was one of the witnesses, according to a press release from the Governor's office. "I would like to propose the current clemency information policies be modified to include the release of all information to an inmate's lawyer or professional representative or to the inmate if he or she is filing without representation," Markham told the Commission on Open Government. "I believe this modification would facilitate a much more fair and balanced outcome for all."

Between 2000 and 2006, 1784 prison inmates filed clemency applications. Only 18 inmates were successful in receiving commuted sentences.

## Water agency creates new office for open government, ombuds

WEST PALM BEACH – In an effort to respond more effectively to the public, the South Florida Water Management District has streamlined its operations to create an Office of Ombuds and Open Government, combining the SFWMD's public records, ombudsman and citizen services functions into one main location.

The SFWMD's is the state's largest water management agency. It is responsible for overseeing water resources in the southern half of the state, from Orlando to the Keys.

"This new office is a part of the District's effort to further the Governor's priorities of open government and customer service," said SFWMD Governing Board Chairman Eric Buermann, according to the *Glades County Democrat*.

Gov. Charlie Crist established his own Office of Open Government a year ago.

The SFWMD processed approximately 1,000 public records requests in 2007. For more information, visit [www.mysfwmd.gov/opengov](http://www.mysfwmd.gov/opengov).

## Judge's ruling limits data on federal workers

SYRACUSE, N.Y. – A federal judge has ruled that the government can withhold information about federal employees from a Syracuse University organization that tracks the data. U.S. District Judge Norman Mordue held that the privacy rights of the employees and national security concerns justified the government's decision to stop releasing complete sets of data in 2003.

The Transactional Records Access Clearinghouse (TRAC) has been posting the names, salaries and positions of 2.7 million federal civilian workers since 1989. Journalists and government watchdog groups often use the data to monitor policies or detect flaws in the system.

"It's a bad decision. It flies in the face of 220 years of federal history," said Reporters Committee for Freedom of the Press Executive Director Lucy Dalglish. "Who is employed by the federal government and what they make has never been kept a secret in the country, unless you're a covert operative. This is an example of privacy interests running amok," Dalglish said, according to *The Associated Press*.

Court papers indicated that the U.S. Office of Personnel Management (OPM) cited the Sept. 11 terrorist attacks and an increased vulnerability of federal workers for withholding the information. Since 2003, the OPM has withheld information on all Department of Defense civilian employees and approximately 150,000 other civilian workers.

The federal government began releasing information about its employees in 1816.

## Judge allows media access to Jena 6 proceedings

NEW ORLEANS – More than two dozen media outlets prevailed in their efforts seeking to open juvenile court proceedings in the case of a black teenager accused of beating a white classmate in Jena, Louisiana, according to the *Houston Chronicle*.

Mychal Bell, 17, is one of six young men charged in the incident at Jena High School. Bell was tried as an adult and convicted of aggravated battery, but that

conviction was vacated. Bell now faces a new trial in juvenile court that the media wants to observe.

State Judge J.P. Mauffray Jr. is presiding over the trial and agreed to open the proceedings after the media sought relief in court. Mauffray had disqualified himself from the media lawsuit because he was named as a defendant in the litigation to open the proceedings. However, now that Mauffray has agreed to open

the proceedings, he has requested Judge Thomas Yeager to dismiss the media's lawsuit.

The prosecution of the "Jena 6" has drawn harsh criticism because three white teenagers accused of hanging nooses in a tree at Jena High School the night before the beating were not charged by the prosecutor's office. Prosecutor Reed Walters originally charged Bell with attempted murder.

## Judge seals confession tape already in circulation

JACKSONVILLE – A taped police interview with a defendant in a drug-trafficking case was sealed by a trial judge, even though *The Florida Times-Union* had already obtained the tape through other sources and reported on its content.

The so-called "Snitch Confession" was already in wide circulation in Jacksonville

when the State Attorney's Office refused to release the recording to *The Times-Union*.

Assistant State Attorney Jay Taylor called the newspaper's articles a "primer" on how to "go about obstructing justice," according to *The Times-Union*.

An attorney for the paper argued that prosecutors should have asked the court

to seal the recording earlier if it wanted to keep the subject out of public scrutiny.

A co-defendant in the case, 32-year old Obi Johnson III, is alleged to have circulated the tape among the public. Authorities have charged Johnson with witness tampering, accusing him of circulating the tape to intimidate the witness.

## Groups seek voter rolls for 2008

TALLAHASSEE – The Florida Department of State is facing more than a dozen lawsuits by civil rights groups seeking access to records of voters turned away from the polls. The groups are challenging the state's methods of deciding who can and cannot vote, alleging the current system unfairly denies voters access to the polls.

Reliance on computer matches is one flaw in Florida's system, and groups such as the Advancement Project hope to obtain records that will illustrate

problems that can occur when voter registration forms are processed.

The Advancement Project filed a federal suit against the Department of State in September. The group made a public records request this year that showed more than 20,000 voter applications were designated as "pending" in 2006.

Lawyers for the state contend that groups are attempting to "create an atmosphere of turmoil where there is none," according to the *Pensacola News-Journal*.

## Domain data open for now

LOS ANGELES – The database that provides information about who registers domain names will stay open to the public, despite efforts by privacy advocates to shield the information from the public.

The decision to keep the database open was made by the Internet Corporation for Assigned Names and Numbers (ICANN), a nonprofit organization that manages the Internet's domain-name system. An ICANN committee voted 17-7 to continue studying the issue.

## PRIVACY

The "WHOIS" database allows the public to view the name and contact information associated with each domain name.

Critics of the publicly accessible database argue that the domain registry doesn't protect the privacy rights of registrants, and that the registry is used by marketers and spammers to obtain new e-mail addresses. However, businesses, intellectual property holders and even law enforcement have argued to keep the database open in order to assist in efforts to go after lawbreakers.

Visit [www.internic.net/whois.html](http://www.internic.net/whois.html) to access the domain registry.

## Does "sounding board" need sun?

PONTE VEDRA BEACH – A committee designed to recommend names for a new high school and address other educational issues is not subject to Florida's Open Meetings Law, according to the St. Johns School Board attorney. Despite this determination, the committee's meetings will be open to the public.

The school board attorney, Frank Upchurch, told the *Ponte Vedra Leader* that because the School Board did not delegate duties to the committee, the Open Meetings Law did not apply. However,

panels formed to advise governmental bodies are typically subject to the Open Meetings Law.

Craig Speziale, principal of the unnamed high school, said the committee would be a "sounding board" on several issues. He said up to 30 members will be selected for the committee based on an online survey on the school's Web site.

In addition to naming the school, the committee will provide input on colors, a mascot, and broader education issues, according to Speziale.

ACCESS  
MEETINGS

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# THE BRECHNER CENTER

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## 2007 FREEDOM OF INFORMATION REPORT

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

### Reporting duo's "super-sealing" series wins honor

The Brechner Center for Freedom of Information announces the winners of the 22nd annual Joseph L. Brechner Freedom of Information Award.

*The Miami Herald's* Patrick Danner and Dan Christensen are this year's recipients for their work to uncover illegal case-sealing practices in the Broward court system and beyond. Christensen won the Brechner Award in 2004 as a reporter for the *Miami Daily Business Review* for his investigation of secret dockets at the federal level.

**BRECHNER  
AWARD 2007**

Danner and Christensen's reporting revealed that the Broward courts had improperly removed more than 100 civil cases from the court docket since 2001. Some criminal cases were also left off the docket, and some judges did not follow the law when sealing records.

Danner, a business desk reporter, originally uncovered the illegal docket practices after a routine court check into a divorce case involving prominent local personalities. His industrious reporting revealed that

the lawsuit had disappeared from the Broward Circuit Court's public, searchable computer system.

Danner and Christensen investigated and filed records requests, which led to a suit by *The Miami Herald* for the case numbers and party names of more than 100 sealed cases.

Danner and Christensen's thorough and diligent use of court records revealed serious problems in the case sealing practices of the Broward courts. However, the impact of their work reached far beyond Broward and spurred statewide reforms.

### Fate of false light delayed until March 2008

TALLAHASSEE – The Florida Supreme Court was set to hear oral arguments Oct. 10 in the false light invasion of privacy case involving Pensacola businessman Joe Anderson Jr. and the *Pensacola News-Journal*, but the Court decided to delay arguments until March 6, 2008, so that arguments could be heard at the same time as the case *Jews for Jesus Inc. v. Rapp*.

The outcomes of the two appeals to the state's highest court should provide

**PRIVACY**

some guidance to Florida attorneys as to the status of false light, which provides a cause of action when published materials portray a person in a "false light" even if the information is true.

The First District Court of Appeal in *Anderson* reversed an \$18.2 million verdict in Anderson's favor, holding that the case was essentially a libel claim and therefore subject to libel's two-year statute of limitations. False light claims have a four-year statute of limitations as "unspecified torts" in Florida.

The Fourth District Court of Appeal in *Rapp* reversed a lower court's dismissal of Edith Rapp's false light claim alleging a Jews for Jesus newsletter implied that she converted to Christianity. The Fourth District also certified to the Florida Supreme Court a question of great public importance: "Does Florida recognize the tort of false light invasion of privacy, and if so, are the elements of the tort set forth in section 652E of Restatement (Second) of Torts?"

The 2007 legislative session saw two bills that would have eliminated the false light tort in Florida, but neither bill passed.

### Experimental records program gets approval

MANATEE COUNTY – The Manatee County Clerk of Court launched a one-year pilot program in public access to paperless court records.

The Florida Supreme Court, which halted all other electronic access initiatives in the state because of privacy concerns, granted Manatee County a "modified limited moratorium," allowing it to serve as the testing ground for public access to electronic court records.

Manatee Clerk of Court R.B. "Chips"

Shore said the program is intended to demonstrate to the Court and skeptics that it is possible to protect confidential information while opening court records to public scrutiny through online convenience.

"I need the public to be involved to test the system so we can report to the Court what works and what doesn't. This needs to work for the public because these are their records," Shore said, according to

**ACCESS  
COURTS**

*The Florida Bar News.*

The program will provide experimental electronic access to court records through its Web site in order to gather information for the court so it can develop rules for access based on real data.

Shore said he hopes Manatee County's pilot program will be the basis for the rest of the state to open up their records. More information about the pilot program is available at [www.manateeclerk.com](http://www.manateeclerk.com).

## Agencies seek advice from attorney general

TALLAHASSEE – Attorney General Bill McCollum issued opinions this year on open government issues ranging from city commission e-mails to accident scene photos. Full-text opinions are available at [myfloridalegal.com](http://myfloridalegal.com).

*Regional planning council: Is it a violation of the Sunshine Law for two county commissioners who are also board members of a regional planning council to attend and participate in planning council meetings when those planning council issues may later arise at county commission meetings?*

AGO 2007-13: Two county commissioners who are also planning council members may take part

in council meetings and express their opinions without violating the Sunshine Law. However, they should not discuss these issues outside the Sunshine as either commissioners or council members.

*E-mails and e-mail addresses: Are e-mails sent by city commissioners that contain undisclosed or blind recipients and their e-mail addresses public records? If so, how should these records be maintained?*

AGO 2007-14: An e-mail sent by the commissioner in connection with official business is a public record, regardless of whether the e-mail contained undisclosed or blind recipients. Records custodians should comply with Florida statutes and internal procedures regarding the maintenance of electronic records.

*Business expansion/relocation plans: Does section 288.075, Florida Statutes, requiring an economic development agency to keep business plans confidential upon written request from the business, preclude the agency from disclosing the existence of the written request and other confidential documents?*

AGO 2007-15: A written request for confidentiality under 288.075(2) may contain information required to be confidential. The records custodian must determine on a case-by-case basis whether the request or part of the request falls under the statutory exemption. The custodian may cite 288.075(2) as the reason for withholding the document (implicating its existence) without violating the confidentiality required by the statute.

*Juvenile misdemeanor records: Is*

*the sheriff's office required to release the name and addresses of parents of juvenile misdemeanor offenders when asked for such information in a public records request?*

AGO 2007-19: Assuming section 985.04(2) (governing juvenile records where the juvenile has committed what would be equivalent to, if he was an adult, three or more misdemeanors or a felony) does not apply, the sheriff's office is not authorized to release the names and addresses of the parents of a juvenile misdemeanor pursuant to a public records request.

*Law enforcement officer photos: Who is considered "law enforcement*

*personnel" for the purposes of the public records exemption in section 119.071 (4)(d)1, Florida Statutes? What limits the chief of police when releasing photos of police department officers and employees?*

AGO 2007-21: This exemption seeks to protect law enforcement personnel and their families. Although "law enforcement personnel" is not clearly defined, it includes law enforcement officers who, for the purposes of the public records exemption, appear to include sworn personnel but not support staff. Photographs of law enforcement officers are exempt, but not confidential. The chief of police should consider whether there is a statutory or policy need for releasing the photos.

*How does the Public Records Law apply to e-mails sent among public officials?*

Informal Opinion, June 8, 2007: E-mails made or received by agency employees in connection with official business are public records. The Open Meetings Law also applies to e-mails among public officials. As long as there is no interaction among officials related to an e-mail sent by one public official (i.e., a county commissioner), then there appears to be no violation of the Open Meetings Law.

*Are local health councils which are provided for in section 408.033, Florida Statutes, subject to the Open Meetings Law?*

AGO 2007-27, June 26, 2007: Yes. In determining whether a private organization is subject to the Open Meetings Law, the Attorney General's

Office usually looks at factors related to the relationship between the private entity (the local health council) and the public entity (such as the Department of Health and the Agency for Healthcare Administration). The local health councils are established pursuant to statute, play an integral role in the decision-making process of the AHCA, their costs are paid by assessments collected by the state, and they are included within the definition of a regional government entity for purposes of the Florida Governmental Conflict Resolution Act. Therefore, local health councils are subject to the Open Meetings Law.

*May the request by the attorney for an entity to meet in private pursuant to an exemption to the Open Meetings Law be made during a special meeting?*

AGO 2007-31, July 10, 2007: Yes. The request for a closed attorney-client meeting may be made during a special meeting as long as the special meeting is open to the public, notice has been given, and minutes are taken.

*Are photographs taken by the medical examiner's investigator at the site of an automobile accident exempt from disclosure under Florida's Public Records Law?*

Informal Opinion, July 25, 2007: Yes. In AGO 2001-47, the opinion concluded that crime scene photographs were not included within the scope of the Fla. Stat. s. 119.07(1) exemption for autopsy photos. However, the exemption would still apply to photographs taken by the medical examiner as part of the autopsy process.

*May city commissioners, outside a public meeting, exchange documents that they wish other members of the commission to consider on matters coming before the commission for official action, and if so, what limitations exist?*

AGO 2007-35: Yes. However, commissioners are not permitted to respond to the exchange of documents or interact with each other related to the documents prior to the public meeting.

*Is a "Notice of Claim" made under section 768.28(6), Florida Statutes, confidential and exempt from the Public Records Law until termination of all litigation and settlement of all claims arising out of the same incident?*

AGO 2007-47: Nothing in the statute expressly includes or excludes the notice as a part of the claims files exempt from public disclosure. The public agency must make a good faith determination of whether the notice is exempt.

## ATTORNEY GENERAL OPINIONS

## State launches new initiatives

TALLAHASSEE – 2007 was a good year for open government policy in Florida, boosted by several new initiatives at the state level.

First, in January, Gov. Charlie Crist announced the creation of the Office of Open Government within his executive office. The goal of the office is to ensure compliance with the Public Records Law and Sunshine Law. The office also assists in training government agencies on government transparency.

“Respecting the public trust that is bestowed upon all of us who serve the people of Florida is a top priority for me and for my administration,” said Crist, who took office Jan. 2, 2007.

In June 2007, Crist appointed a nine-member Commission on Open Government to review and evaluate the public’s right of access to government meetings and records. The commission’s findings and recommendations garnered at a series of public hearings will be presented to the governor, Senate

president and speaker of the House of Representatives by the end of 2008.

The commission is comprised of media representatives, attorneys and government officials from throughout the state.

Crist’s successor as attorney general, Bill McCollum, also took steps to keep Florida “in the Sunshine” with the announcement of a new project at his office. McCollum launched the Government Accountability Project (GAP) in partnership with Professor Sandra Chance, executive director of the Brechner Center for Freedom of Information.

The first phase of GAP was completed in the fall of 2007 and identified records that are difficult for citizens to obtain. In the second phase, GAP will work with state and local governments to increase access to records.

“Florida is a national leader in providing open government for the public,” McCollum said. “It is my hope that this project will serve as an example for other government entities to follow.”



*Berl, Josh, and Marion Brechner attended the 2007 Florida FOI Summit, which honored The Brechner Center’s 30th anniversary. The Summit also drew FOI experts from across the country to discuss current issues.*

## FEMA releases aid information

FORT MYERS – Two months after a court ruling in its favor, *The News-Press* (Fort Myers) finally received disaster aid information from the Federal Emergency Management Agency (FEMA).

In June, a panel for the 11<sup>th</sup> U.S. Circuit Court of Appeals ruled that FEMA must provide *The News-Press* and other Florida newspapers with addresses of households that received disaster aid between 1998 and 2004.

Before it released the information, FEMA spent \$1.1 million to notify the aid recipients that their addresses would be disclosed.

Based on the first set of data released by

FEMA on Aug. 27, *The News-Press* found that many Floridians received less than \$10 in aid.

Analysis of the information also showed that of more than 1 million people who requested FEMA aid after the devastating 2004 hurricanes, fewer than one in three received cash assistance.

In opposing the release of the information, the government argued that disclosure would violate the privacy of aid recipients, stigmatize victims and potentially be used for identity theft.

The media argued that specific information was necessary to investigate claims of abuse of the system.

## Center honors 6 in Fla. FOI Hall of Fame

The 2007 Florida FOI Summit offered an opportunity not only to discuss the current condition of open government laws, but also to recognize those whose efforts have helped make Florida’s laws the toughest in the nation.

The six Florida Freedom of Information Hall of Fame inductees are: James C. Adkins Jr., Marion B. Brechner, Talbot “Sandy” D’Alemberte, H.G. “Buddy” Davis, Louis Michael “Skip” Perez and Gregg D. Thomas.

The late James C. “Jimmy” Adkins Jr., a Florida Supreme Court justice, earned the nickname “Justice Sunshine” for his interpretations of Florida’s fledgling Open Meetings Law in favor of the public.

Philanthropist and former media executive Marion B. Brechner was inducted for her continuing support of FOI and the First Amendment.

President Emeritus of Florida State University Talbot “Sandy” D’Alemberte was a key figure in several important events in the history of freedom of information in Florida – including the passage of the Sunshine Law and the success of the cameras in the courtroom experiment.

Longtime journalism professor at the University of Florida and a Pulitzer-Prize winning editorialist, the late H.G. “Buddy” Davis Jr. played a key role in the development of Florida’s Open Meetings Law, which he helped draft.

Louis Michael “Skip” Perez, executive editor of *The Lakeland Ledger*, has consistently fought for the right to government information and has been a leader in Florida’s FOI movement.

Gregg D. Thomas is a media attorney with the law firm Thomas & LoCicero in Tampa. Thomas has spent the past 30 years advocating for the media in courtrooms across the state and in the U.S. Supreme Court.

More information about the 2007 class of Hall of Fame inductees can be found at [www.brechner.org](http://www.brechner.org).

## Lawmakers pass 11 new exemptions in 2007

TALLAHASSEE – The following is a summary of laws passed during the 2007 legislative session that created exemptions to the Public Records and Open Meetings laws. Chief sponsors of the bills are in parentheses at the end of the summaries. SB = Senate Bill; HB = House Bill; CS = Committee Substitute.

### HB 63 Exemption/Domestic

**Violence – State Employees:** Creates a public records exemption for personal, identifying information contained in records documenting an act of domestic violence that is submitted to an agency by an agency employee. Also exempts written requests for leave submitted by an agency employee and agency time sheets reflecting such requests until one year after the leave has been taken. (Porth, D-Coral Springs)

### CS/HB 131 Exemption/Florida

**Opportunity Fund:** Creates a public records exemption for 1) materials relating to methods of manufacture or production, potential trade secrets, or patentable material received, generated, ascertained, or discovered during the course of research conducted by universities or other publicly supported organizations in Florida; 2) information identifying investors or potential investors to the fund who desire anonymity; 3) information received from another state or nation that would otherwise be confidential or exempt; and 4) proprietary confidential business information regarding alternative investments for 10 years after termination of the investment. Exempts portions of meetings of the fund board and the Institute for the Commercialization of Public Research at which exempt information is discussed. Requires that such meetings be recorded but creates an exemption for portions containing confidential information. Allows access under certain specified conditions and stipulates that any lawsuit to compel access must be brought in Orange County. (Grant, R-Port Charlotte)

### CS/HB 463 Exemption/High School

**Drug Tests:** Creates a public records exemption for records relating to random drug tests of high school athletes. Allows disclosure to certain persons, including a student's parents and administrators. Exempts portions of a meeting at which confidential and exempt records are

discussed or presented. (Llorente, R-Miami)

### HB 853 Exemption/Historic St.

**Augustine – Donors:** Creates a public records exemption for the identity of a donor or prospective donor to the historic preservation of St. Augustine if the donor or prospective donor wishes to remain anonymous. (Proctor, R-St. Augustine)

### CS/SB 1034 Exemption/Physician

**Workforce Surveys:** Creates a public records exemption for all personal, identifying information contained in workforce surveys completed by physicians as a condition of license renewal by the Department of Health. Allows disclosure under certain specified circumstances. (Atwater, R-North Palm Beach)

(Atwater, R-North Palm Beach)

### CS/HB 1405

**Exemption/  
Historic**

**Landmarks – Donors:** Creates a public records exemption for identifying information about a donor or prospective donor to publicly owned house museums designated National Historic Landmarks if such persons desire anonymity. (Bullard, D-Miami)

### SB 1510 Exemption/Sunshine State

**One-Call:** Creates a public records exemption for proprietary confidential business information held by Sunshine State One-Call which describes damage to an underground facility or use of the member ticket management software system. Prohibits disclosure if the information 1) is treated by the company as confidential; 2) would be used by a competitor to harm the company's interests; and 3) is not otherwise readily ascertainable or publicly available by proper means from another source in the same configuration as provided to Sunshine State One-Call of Florida, Inc. (Aronberg, D-Greenacres)

### HB 7159 Exemption/Lifeline

**Assistance Plan:** Creates a public record exemption for personal identifying information of participants in the Lifeline Assistance Plan held by the Public Service Commission. Provides for disclosure when authorized by the customer, necessary for billing purposes, or required by the court. (Reagan, R-Bradenton)

### HB 7169 Exemption/Worker's

**Compensation:** Creates public record exemptions for records held by the Florida Workers' Compensation Joint

Underwriting Association, Inc. that are 1) underwriting files; 2) claims files until termination of all litigation and settlement of all claims arising out of the same accident; 3) records obtained or generated by an auditor pursuant to a routine audit or investigation until such is complete; 4) proprietary information licensed to the association under contract; 5) medical records; 6) records relating to an employee's participation in an employee assistance program; 7) information relating to negotiations for financing, reinsurance, etc., until conclusion of the negotiations; 8) reports provided to or submitted by the association regarding suspected fraud or other criminal activity until any investigation into such activity is closed; (9) payroll information and client lists of employee leasing companies received from the Department of Revenue; and 10) records prepared by an association attorney reflecting a mental impression, conclusion, litigation strategy, or legal theory of such. Allows disclosure under certain specified circumstances. Requires that all portions of meetings discussing confidential information be recorded and transcribed, but creates an exemption for such information. (Reagan, R-Bradenton)

### HB 7193 Exemption/U.S. Census

**Information:** Creates a public record exemption for U.S. Census bureau information, including maps showing structure location points, address verification records, and address error or omission records held by an agency pursuant to federal law. Allows for disclosure under certain specified circumstances. (Attkisson, R- St. Cloud)

### HB 7201 Exemption/Economic

**Development Agencies:** Creates an exemption for 1) proprietary confidential business information held by an economic development agency until such information is no longer treated as such by the proprietor; 2) trade secrets and federal identification numbers; 3) unemployment compensation account numbers, or Florida sales tax registration numbers held by an economic development agency (EDA). In addition, creates an exemption for certain specified information held by an EDA pursuant to the administration of an economic incentive program for qualified business, stipulating that the exemption applies only for the duration of the incentive agreement and expires if the incentive agreement is terminated. (Attkisson, R- St. Cloud)

## LEGISLATIVE SESSION REPORT

## NASA releases air-safety data

WASHINGTON, D.C. – Despite earlier attempts at secrecy, NASA decided to release results of an aviation survey that showed near collisions of aircraft and other safety problems are more prevalent than the public may think.

*The Associated Press* requested the survey data under FOIA in 2006, but NASA refused to release the information, citing the potential to upset travelers and damage airline profits. Pressure from Congress and the media resulted in NASA receding from its earlier position.

The survey collected data from 24,000 pilots, who were interviewed anonymously. NASA official Michael Griffin indicated that the \$11.3 million survey's methodology may be flawed, a claim the survey's experts say is not true.

NASA's promise to release the data came with a caveat – it said it would take months to “scrub” the data to be sure that no identifying information of the pilots would be released. But a Stanford University professor who helped develop the survey said the identifying information could easily be removed in a week.

Both Democratic and Republican lawmakers were highly critical of NASA's reaction to the request for information. “Why does it take a hearing in Congress and public pressure for a hearing to get this information made public,” said Rep. Harry Mitchell, D-Ariz, according to *The AP*.

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## FEMA draws fire for fake news

WASHINGTON, D.C. – The Federal Emergency Management Agency (FEMA) staged a fake news conference about assistance to victims of California wildfires, a move that drew harsh criticism from government leaders.

“I think it was one of the dumbest and most inappropriate things I've seen since I've been in government,” Director of Homeland Security Michael Chertoff said, according to *The Associated Press*. FEMA is a part of Homeland Security.

The press conference featured FEMA employees posing as reporters and asking Deputy Director Harvey E. Johnson questions about the agency's response to the wildfires. FEMA gave the media 15 minutes notice of the news conference and made an 800 number

available so that reporters could listen in.

Johnson said the goal of the press conference was to relay information to the public as soon as possible but called the event “an error in judgment,” according to *The AP*. John P. “Pat” Philbin, who oversaw the conference, lost a promotion because of the incident.

Philbin said there was no plan to stage a press conference. He said he assumed the media advisory had been released much further in advance.

“[A]t the end of the day, I'm the person in charge and responsible for this,” Philbin told *The AP*. He said the agency has struggled with increasing transparency and major reorganization following its sluggish response to Hurricane Katrina.

## Attendees show ID at meeting

MIAMI-DADE COUNTY – The U.S. Army Corps of Engineers' recent meeting on the environmental impact of mining near the Everglades was open to the public, but attendees faced an overflowing crowd and uniformed firefighters who demanded photo identification.

After providing photo IDs, attendees were photographed and given orange badges to wear in the building.

The meeting occurred at the Miami-Dade Fire Rescue headquarters. The fire department said the security measures were dictated by the Department of Homeland Security.

Public access to the Corps' decision-making process regarding the issuance of mining permits was key to a federal

judge's decision to temporarily void the permits, according to the *South Florida Business Journal*.

Meanwhile, the Corps is studying the impact of rock mining on Everglades water supplies.

Industry groups such as CSX and the Florida Chamber of Commerce attended the meeting and asked the Corps to restore mining operations. The case is now pending before the U.S. Court of Appeals for the Eleventh Circuit.

The Corps is considering a new location for future meetings. Corps project manager Leah Oberlin told the *South Florida Business Journal* that she did not know about the ID requirement when she scheduled the meeting.

## NEWSGATHERING

### TV reporter arrested for trespass

MIAMI – A local TV reporter was arrested while attempting to interview parents and students at a Miami-Dade high school. Police charged WPLG-TV reporter Jeff Weinsier with trespassing and possession of a firearm on school grounds. Officers said they asked Weinsier, 40, several times to cross the street.

“I was never trying to get onto school property, I just wanted to interview people outside of the school, like parents picking their kids up,” Weinsier said, according to

The Reporters Committee for Freedom of the Press.

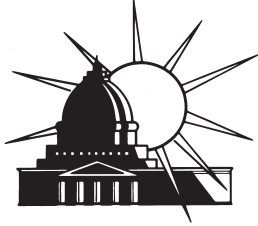
Weinsier began carrying a gun after receiving death threats related to his reports on unsanitary conditions at restaurants, according to the station. Weinsier, who has a concealed weapons permit, was released from jail on \$11,000 bond. The station said it stands behind Weinsier's actions, but he was suspended for two weeks for carrying a gun without permission.

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# THE BRECHNER REPORT

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## Public records key to changing culture of secrecy

Welcome to Jacksonville City Council's "lost episodes." Hundreds of public meetings so poorly noticed or recorded that the public had little-to-no chance of knowing about them, even though they covered such key taxpayer topics as growth, budgets and transportation. And the public would still be clueless if not for the power of public records.

A *Florida Times-Union* review of 18 months of council member calendars, e-mails, meeting announcements and minutes revealed a culture of carelessness, apathy and arrogant disregard for the Open Meetings Law. Aside from a faulty system of public notice and minutes-keeping regarding meetings, the probe exposed dozens of questionable unnoticed meetings among council members

### The Back Page

By Joe Adams

The newspaper's findings concerned the council and its top lawyer so much that they introduced the Jacksonville Sunshine Law Compliance Act to correct the problems – nearly two weeks before *The Times-Union* planned to publish its findings. The act – co-sponsored and later approved by all 19 city council members – is believed to be the first local addendum to Florida's Sunshine Law. In addition, a grand jury probe into potential Sunshine violations continues at this writing. Council members have denied any wrongdoing.

A loose reputation clouded the council's Sunshine practices for decades. Despite occasional newspaper reports of problems, not much changed. It looked to be that way again in January 2006. *Times-Union* reporter Beth Kormanik wrote a story that I followed with a critical editorial about an out-of-sunshine e-mail discussion among some council members about a downtown building's future. The ease of that conversation hinted that this wasn't a one-time thing, and I decided to start reading the council's e-mails regularly. Access didn't come easily. It took five months to overcome technical hurdles just to see e-mails of all council members from one computer. With the council alerted in advance of my City Hall visits, I expected to find few, if any, similar e-mail chats. And I didn't.



Joe Adams

But some stunning patterns emerged from those checks and the two public records requests for calendars and meeting documents that I made later. The council fared well at posting notices and minutes for its regular council and committee meetings. But it failed miserably with smaller meetings involving two or more council members – where much of public policy is forged. Some noticed those meetings on a city listserv off limits to the public or press. Others posted notices on a first-floor City Hall bulletin board. Some put them in a press box at council offices, which required the public to go through two layers of security to reach them.

Meanwhile, 10 council members could produce no meeting minutes at all for an 18-month period. And some minutes were so sketchy that it would take a psychic to figure out what council members said. Council members scheduled and held some meetings on the same day. And most meetings occurred in council members' own offices, which can have a chilling effect on attendance. It all added up to a Jacksonville brand of Sunshine Law that shut out the public for years.

I shared the details of that year of research with the newsroom. Kormanik built a database based on more than 4,000 pages of calendars and other documents we analyzed line by line. Kormanik's special report appeared and my editorials followed, all earlier than planned because of the new Sunshine ordinance. It gives Jacksonville the strongest open meetings requirements in Florida, including: uniform rules for posting meeting notices and minutes; Internet access to notices and minutes for all council members; no public meetings in council members' personal offices or restaurants; annual sunshine training for council members; meeting notices at least 24 hours in advance unless special signoff is obtained; formal compliance reviews and an annual report.

Officials determined to disregard the law will do it. But the council's Sunshine culture brightened dramatically, and the public has more access to its own business than ever. A key lesson from all of this: Never underestimate the power of public records to help inspire positive change.

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*Joe Adams is an editorial writer with The Florida Times-Union and author of The Florida Public Records Handbook.*