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# THE BRECHNER REPORT

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July 2009

## Supreme Court upholds fleeting expletives ban

WASHINGTON, D.C. – In a 5-4 decision, the U.S. Supreme Court upheld the Federal Communications Commission's power to fine broadcasters for airing a single expletive and remanded the case back to the appellate court.

In *FCC v. Fox Television*, the Supreme Court upheld the commission's new policy that a single fleeting expletive can trigger fines for the network and all local broadcasters airing the show. Before the policy change, the FCC only fined broadcasters for repeated expletives as established in the 1978 case,

### FIRST AMENDMENT

*FCC v. Pacifica Foundation.*

In *FCC v. Fox Television*, Justice Antonin Scalia, who wrote the majority opinion, wrote that the FCC had authority to crackdown on "foul-mouthed glitteratae from Hollywood," referring to 2002 and

2003 incidents in which Cher, Nicole Richie and Bono said an expletive on broadcast television, in separate incidents. Justice Scalia was joined by Chief Justice John Roberts and Justices Anthony Kennedy, Clarence Thomas and Samuel Alito.

Justice Stephen Breyer wrote a dissent and was joined by Justices John

Paul Stevens, Ruth Ginsburg and David Souter. Breyer wrote that the FCC had not explained its reasoning for changing the policy nor addressed the First Amendment need to avoid censorship.

Broadcasters had argued they should not be subject to indecency rules because cable and satellite systems are not regulated and that the FCC's decision violated the Administration Procedures Act and was "arbitrary and capricious," according to *The Reporters Committee for Freedom of the Press*.

Source: *Los Angeles Times*, *The Reporters Committee for Freedom of the Press* and <http://www.supremecourtus.gov>

## Federal court allows Web updates

WEST PALM BEACH – Reporters will be allowed to use the Internet to send Web updates from federal courts in the Southern District of Florida, according to an administrative order issued by U.S. District Judge Federico Moreno, chief judge for the Southern District of Florida.

Moreno was responding to a request from *The Palm Beach Post*.

While reporters will not be allowed to text or blog from inside the courtroom, they will be allowed to step outside to send the updates.

### COURTS

Previously, reporters were not allowed to bring cell phones or BlackBerry phones into a federal courthouse within the district. The court's policy followed the Federal Rules of Criminal Procedure, which bans "broadcasting" in federal court. The rule dates back to 1944. In recent years, some federal judges have decided that the ban was not intended to apply to new technology, according to *The Palm Beach Post*.

Many state and local judges have allowed laptops and other technology in their courtrooms.

Source: *The Palm Beach Post*

## Court recordings request rejected

TAMPA – The 2<sup>nd</sup> District Court of Appeals denied a public records request from *The Tampa Tribune* for audio recordings of a court proceeding.

The newspaper was seeking a recording of a January sentencing hearing.

Attorneys for the records custodian, Chief Judge Robert Morris of the 6<sup>th</sup> Judicial Circuit, argued that the records from the recording system should not be released because the digital court reporting system, which records everything, may

have captured conversations protected by attorney-client privilege.

The court ruled that the audio captured on the digital court reporting system did not constitute a court record subject to the public records law because the records are used to create the official court record, according to *The Tampa Tribune*.

The court also ruled that the record custodian may decide in what form to release the court record.

Source: <http://tbo.com>

## House passes shield bill

WASHINGTON, D.C. – The U.S. House of Representatives passed the Free Flow of Information Act by a voice vote.

The bill, H.R. 985, would give limited protection to journalists who refuse to reveal confidential sources.

## REPORTER'S PRIVILEGE

Supporters of the federal shield bill have argued that the bill protects the public's right to know because sources will not reveal information to journalists if they fear retribution. Opponents argued that a shield law could hinder criminal investigations and threaten national security, according to *The Palm Beach Post*.

The bill contains exemptions for national security, terrorism, and situations where reporters are eyewitnesses to crimes.

Source: *The Palm Beach Post* and *The Reporters Committee for Freedom of the Press*

# ACCESS MEETINGS

## Grand jury indicts former House Speaker Sansom

TALLAHASSEE – A grand jury indicted former House Speaker Ray Sansom, R-Destin, and Northwest Florida State College President Bob Richburg on felony charges in connection with \$35 million Sansom funneled to the college during his two-years as the House budget chairman and in connection with \$6 million in state funds sought to build a hangar for Republican donor and Sansom friend Jay Odom.

Sansom was indicted on charges that he falsified the state budget to get the

\$6 million in state funds for Odom's hurricane proof hangar.

Richburg was indicted for perjury after he testified that there was never discussion about Odom using the hangar.

Planning documents and e-mails obtained through public records link Sansom, Richburg and developer Jay Odom to plans for building the facility. The grand jury also determined that both Sansom and Richburg violated "the spirit of the Sunshine Law" in holding a secret meeting of college trustees.

Sansom came under fire earlier this year for accepting a \$110,000 job at the college, steering millions in state funds to the college over a two-year period, and for coordinating the meeting of trustees at a members-only club via e-mail with Richburg.

According to the grand jury findings the meeting was partly held "to thank the college's board of trustees for taking responsibility for the Destin Project, an aircraft hangar," according to the *St. Petersburg Times*.

*Source: St. Petersburg Times*

## Texas open meetings law may be unconstitutional

TEXAS – In a unanimous decision, the 5<sup>th</sup> U.S. Circuit Court of Appeals in New Orleans ruled that strict scrutiny applies when considering restrictions on public officials' speech under the Texas Open Meetings Law.

The court remanded the case back to the trial court for review of the case on whether the Texas Open Meetings Law met the strict scrutiny standard.

In the case, *Rangra v. Brown*, two

Alpine City Council members were prosecuted for violating the open meetings law after exchanging private e-mails discussing the time and content of a council meeting to consider a contract issue. The charges alleged the two members formed a quorum required to hold discussions in public.

The district attorney dropped the charges. The council members brought suit in federal court against the state of

Texas arguing that the state's open meetings law violated their First Amendment rights of free speech.

Few laws are found to meet the strict scrutiny standard, which requires that laws be narrowly tailored to further a substantial government interest.

The federal court's opinion is controlling law in Louisiana, Mississippi and Texas.

*Source: The Reporters Committee for Freedom of the Press*

## ACCESS RECORDS

### Financial forms hard to access

TALLAHASSEE – Political disclosure forms that reveal the income and possible conflicts of interest of public officials are difficult for residents to get a hold of, despite the forms being public records, according to *The Miami Herald*.

A "spot check" of five south Florida cities by the newspaper found disclosure forms were not available online in any of the five cities checked. The cities were Coral Gables, Fort Lauderdale, Hollywood, Miami and Pembroke Pines.

The forms are stored at various city,

county and state offices making them more inaccessible, according to *The Miami Herald*.

When questioned, officials cited low public interest among the reasons initiatives to publish financial disclosure forms online have failed or are not pursued.

Last year, 768 elected officials faced fines from the Florida Commission on Ethics related to their financial disclosure forms, according to *The Miami Herald*.

*Source: The Miami Herald*

### Suit over job records settled

AVON PARK – A lawsuit filed by Ted Long, the public works department coordinator, against City Manager Sarah Adelt was settled with the city granting access to the public records requested and agreeing to pay attorneys' fees, according to the *News Sun*.

Long filed the lawsuit after he was denied access to his personnel record

and other documents related to his performance as public works department coordinator. He filed a written public records request with the city manager for those records and "any and all public records in support of any allegations of violating any city policy," among others, according to the *News Sun*.

*Source: News Sun*

### Quest for leak continues

DETROIT – A federal judge ruled that *Detroit Free Press Reporter* David Ashenfelter can invoke the Fifth Amendment to avoid disclosing his source at the Justice Department.

### REPORTER'S PRIVILEGE

Ashenfelter was subpoenaed to reveal his source in a 2003 story disclosing that Richard Convertino, a former federal prosecutor, was under internal investigation for his handling of a terror trial.

Convertino is suing the Justice Department arguing the leak violated the law.

After the ruling, Convertino filed a motion seeking 2007 testimony from *Detroit Free Press* editors as well as other documents that could reveal the identity of the sources.

*Source: www.freep.com*

# 2009 LEGISLATIVE REVIEW

TALLAHASSEE – The following is a summary of bills pertaining to public records and open meetings introduced during the 2009 legislative session. Chief sponsors of the bills are in parentheses at the end of the summaries. Copies of the legislation in full are available at the Florida Legislature's Web site ([www.leg.state.fl.us](http://www.leg.state.fl.us)). *SB = Senate Bill; HB = House Bill; CS = Committee Substitute.*

*The following nine bills create new exemptions to the state Public Records and Open Meetings laws. The status of each bill as of June 22 is noted.*

## **HB 7093 Exemption/**

**Telecommunications and Broadband Companies:** Creates a public records exemption for proprietary confidential business information obtained from telecommunications companies and broadband companies by the Department of Management Services. Exempted information includes plans, billing and payment records, trade secrets or other information that is intended to be confidential and is not otherwise publicly available in the format held by the department. Information related to maps, facility locations, broadband services and speed is not proprietary. (H. Economic Development Community Affairs Policy Council) Awaiting final action by Gov. Crist.

## **HB 7119 Exemption/Education**

**Records:** Creates a public records exemption for K-12 education records held by an agency, public school, center, institution, or other entity that is part of state's education system. The bill also expands an exemption for records of students in public postsecondary educational institutions including education records and applicant records. (H. Education Policy Council) Awaiting final action by Gov. Crist.

## **HB 7125 Exemption/Military Base**

**Closures:** Creates a public records exemption for portions of records held by the Florida Council on Military Base and Mission Support on U.S. Department of Defense Base Realignment and Closure Activities related to 1) strengths and weaknesses of military installations or missions; 2) selection criteria for realignment and closure of military bases and missions; 3) Florida's strategy to retain military bases during federal base realignment and closure procedures; 4)

agreements or proposals to relocate or realign military units of missions. Also creates a public meetings exemption for council meetings at which exempt information is presented or discussed. (H. Economic Development & Community Affairs Council) Signed by Gov. Crist June 10.

## **SB 166 Exemption/Donors to Public**

**Buildings:** Creates a public records exemption for the name, address and telephone number of donors or prospective donors to publicly owned buildings or facilities if the donor desires to remain anonymous. (Ring, D-Margate) Awaiting final action by Gov. Crist.

## **SB 2158 Exemption/Florida Insurance**

**Guaranty Association:** Creates a public records exemption for records held by the Florida Insurance Guaranty Association: 1) claims files until the end of litigation, settlement and final closing of all claims related to the incident; 2) medical records and information relating to the medical condition or status of a claimant; and 3) records privileged by attorney-client communications. (Haridopolos, R-Melbourne) Signed by Gov. Crist June 16.

## **CS/HB 135 Exemption/Insured**

**Dependents:** Creates a public records exemption for the personal identifying information of insured dependents of current and former agency employees insured by an agency group insurance plan. (McKeel, R-Lakeland) Signed by Gov. Crist June 1.

## **CS/HB 631 Exemption/Estate**

**Inventories and Accountings:** Creates a public records exemption for estate or elective estate inventories and accountings filed in an estate proceeding. The records may be disclosed in specific circumstances including under court order upon showing good cause. (Hukill, R- Port Orange) Awaiting final action by Gov. Crist.

## **CS/HB 895 Exemption/School Testing**

**Investigations:** Creates a public records exemption for the identity of an educational institution, the personal identifying information of all personnel and records of misconduct obtained or reported in connection with investigating testing impropriety by the Department of Education. The records are exempt until the investigation concludes or becomes

inactive. (Roberson, R-Port Charlotte) Signed by Gov. Crist June 10.

## **CS/SB 440 Exemption/Controlled**

**Substances Database:** Creates a public records exemption for information and records reported to the Department of Health via the electronic prescription drug monitoring program. The exempted identifying information of patients, health care providers, pharmacists and employees of practitioners includes the name, address, telephone number, insurance plan number, social security number, provider number, Drug Enforcement Administration number, and other unique identifiers. (Fasano, R-New Port Richey) Signed by Gov. Crist June 18.

*The following six bills concerning Public Records and Open Meetings laws were enacted or amended during the 2009 legislative session.*

**HB 381 Care of Children:** Creates the "Zahid Jones, Jr., Give Grandparents & Other Relatives a Voice Act," which requires that the case record of a child under supervision or in custody of the Department of Children and Families be maintained in a complete and accurate manner. (Thompson, D- Orlando) Signed by Gov. Crist May 20.

## **CS/SB 126 Children and Vulnerable**

**Adults:** Requires that the case record of a child under the supervision or custody of the Department of Children and Family Services be maintained in a complete and accurate manner and that the file be available to the child without cost and be accessible by the child's foster parents, pre-adoptive parents, adoptive parents and adoption entities under certain conditions. (Dockery, R-Lakeland) Signed by Gov. Crist May 14.

## **CS/SB 162 Electronic Health Records:**

Expands access to a patient's health records to facilitate the electronic exchange of data between certain health care facility personnel. Also creates the Florida Electronic Health Records Exchange Act. (Ring, D-Margate) Signed by Gov. Crist June 16.

## **CS/SB 1796 Financial Transparency:**

Requires the Executive Office of the Governor to establish a Web site available through the state's Internet portal to provide access to appropriations and

# LEGISLATION CONTINUED

expenditures data for all branches of government. Also directs the Auditing Committee to provide oversight and management of the Web site and provide information on governmental appropriations and expenditures. (Alexander, R- Winter Haven) Signed by Gov. Crist May 27.

## **CS/CS/SB 2108 Clerks of Court/**

**Transfer of Services:** Stipulates that the Clerks of Court Operations Corporation be housed in the Justice Administrative Commission and that all revenues received by the clerks office be state funds. The bill also calls for the clerks of court to be funded by state appropriation rather than filing fees. Also requires that the clerks of court develop standards for reviewing the clerks of court performance and notify the Legislature and the Supreme Court of any clerk not meeting standards. (Pruitt, R- Port St. Lucie) Signed by Gov. Crist June 18.

## **CS/SB 2188 Administrative Procedures/**

**Public Meetings:** Amends ch.120, the Administrative Procedures Act to require that each agency provide notice and the agenda of public meetings, hearings and workshops on the agency's Web site. (Joyner, D-Tampa) Signed by Gov. Crist June 16.

*The following thirteen exemptions were reenacted during the 2009 session under the Open Government Sunset Review Act. Amendments are noted. Other bills introduced during the session that were similar or identical to these bills, but were not passed, are available in the "Related Bills" section of the respective legislation.*

## **HB 7013 OGSR/Eminent Domain**

**Records:** Reenacts with minor modification s. 73.0155, F.S., providing an exemption for business information provided by the owner of a business to governmental condemning authority for the purpose of making an offer of business damages in negotiations in an eminent domain proceeding. (H. Governmental Affairs Committee) Awaiting final action by Gov. Crist.

## **HB 7015 OGSR/Campaign Finance**

**Reports:** Reenacts with minor modification s. 106.0706, F.S., providing an exemption for information entered into the electronic filing system in connection with electronic filing of campaign finance reports until the information is submitted to the Division of Elections is

a filed report. (H. Governmental Affairs Committee) Signed by Gov. Crist June 10.

## **HB 7017 OGSR/Building Plans and**

**Blueprints:** Reenacts with minor modification s. 119.701(3)(c), F.S., providing an exemption for building plans, blueprints, schematic drawings and diagrams held by an agency depicting the internal layout or structural elements of certain facilities, complexes and developments. The exemption does not apply to comprehensive plans, site plans or amendments submitted for approval under local land or zoning regulations. (H. Governmental Affairs Committee) Awaiting final action by Gov. Crist.

## **HB 7021 OGSR/Children's Services**

**Council:** Reenacts with minor modification s. 125.901(11), F.S., providing an exemption for personal identifying information held by a children's services council regarding a child or the child's parent or guardian. (H. Governmental Affairs Committee) Signed by Gov. Crist June 10.

## **HB 7025 OGSR/Archival Material:**

Reenacts with minor modification s. 275.38, F.S., providing an exemption for non-public manuscripts or archival material turned over to the Florida State Archives under special conditions. The manuscripts or material will be subject to disclosure 50 years after the date of the creation of such records. (H. Governmental Affairs Committee) Signed by Gov. Crist June 10.

## **HB 7035 OGSR/ Surplus State Lands:**

Reenacts with modification s. 253.034(6)(g)1., F.S., providing an exemption for written valuations of surplus state lands and related documents until two weeks before a contract regarding the purchase, exchange or disposal of such land is first considered for approval. (H. Governmental Affairs Committee) Signed by Gov. Crist June 16.

## **HB 7037 OGSR/Home Addresses of U.S.**

**Attorneys:** Reenacts, narrows and moves the public records exemption for the home addresses of U.S. attorneys, judges and magistrates. s. 119.071(5)(i), F.S., exempts the home addresses, telephone numbers and photographs of current or former U.S. attorneys, judges or magistrates, as well as, the home addresses, telephone numbers, photographs and place of employment of such persons' spouses

and children. HB 7037 also exempts the name and location of the schools or day care facilities attended by their children and requires that the attorney, judge or magistrate request confidentiality in writing and provide a written statement that reasonable efforts have been made to protect such information in other publicly-available sources. (H. Governmental Affairs Committee) Signed by Gov. Crist June 11.

## **HB 7039 OGSR/ Insurance Claim**

**Data Exchange Information:** Reenacts s. 409.25661, F.S., providing an exemption for information obtained by the Department of Revenue in connection with a program that allows the department to match insurance claims of non-custodial parents who owe past-due child support. The information is confidential and exempt until a match is determined to exist at which time the information becomes subject to public disclosure. If no match exists the information will be destroyed. (H. Governmental Affairs Committee) Signed by Gov. Crist June 2.

## **HB 7041 OGSR/ Human & Machine**

**Cognition Institute:** Reenacts with modification s. 1044.4472, F.S., exempting 1) material related to methods of manufacture or production; 2) potential or actual trade secrets; 3) patentable materials or proprietary business information; 4) the identity of donors or potential donors who wish to remain anonymous; and 5) any information received by the Institute that would otherwise be confidential and exempt. Also reenacts exemptions for portions of meetings at which exempt information is discussed. (H. Governmental Affairs Committee) Signed by Gov. Crist June 18.

## **CS/HB 7019 OGSR/Recreation**

**Programs for Children:** Reenacts with some modification s. 119.071(5)(c), F.S., providing an exemption for information that would identify or locate a child who participates in a government-sponsored recreation program or information that would identify a parent or guardian of child. "Government-sponsored recreation program" is defined as an after-school program, an athletic program, a nature program, a camp or other recreational program for which an agency assumes responsibility for a child participating in the program. Access may be allowed

# LEGISLATION CONTINUED

upon court order showing good cause. (H. Governmental Affairs Committee) Signed by Gov. Crist June 10.

**CS/HB 7027 OGSR/Motor Vehicle Records:** Reenacts with significant technical modification s. 119.0712(2), F.S., the Florida Driver's Privacy Protection Act, which exempts from public records the personal identifying information contained in motor vehicle records. (H. Governmental Affairs Committee) Signed by Gov. Crist June 10.

**CS/HB 7043 OGSR/Scripps Research Institute:** Reenacts with some modification s. 288.9551, F.S., providing exemption for various public records and open meetings for the Scripps Florida Funding Corporation, the Office of Tourism, Trade and Economic Development and the Scripps Research Institute. HB 7043 provides exemptions for 1) materials related to methods of manufacture or production, potential or actual trade secrets, patentable materials, or proprietary information received, generated, ascertained or discovered by or through the Scripps Research Institute; 2) agreements and proposals to receive funding; 3) materials relating to the recruitment of scientists and researchers; 4) the identity of donors or potential donors who wish to remain anonymous; 5) information that is otherwise confidential or exempt; 6) personal identifying information of participants in trials or experiments; 7) medical or

health records related to participants in clinical trials; 8) portions of meetings at which exempt information is discussed; and 9) all records generated during closed meetings. HB 7043 also stipulates that the Scripps Research Institute is a private, not-for-profit entity and is not subject to the public records law or the open meetings law. The exemption will be subject to review and reenactment in 2014. (H. Governmental Affairs Committee) Awaiting final action by Gov. Crist.

**CS/HB 7051 OGSR/Social Security Numbers:** Reenacts with modification s. 119.071(4), F.S., providing an exemption for social security numbers of government employees and also amending s. 119.071(5)(a), F.S., providing a general exemption for social security numbers. (H. Governmental Affairs Committee) Awaiting final action by Gov. Crist.

*The following bill repealed an existing exemption.*

**HB 7023 Exemption/Patient Safety Data:** Repeals s. 381.2073, F.S., which provided an exemption for information identifying a patient contained in patient safety data and information identifying the person reporting the information in records held by the Florida Patient Safety Corporation. (H. Governmental Affairs Committee) Signed by Gov. Crist May 27.

*The following bills were introduced during the 2009 session but were not passed.*

HB 601 – Exemption/Self-Critical Analysis Reports  
HB 1017 – Exemption/Controlled Substances Database  
SB 76 – Juvenile Records  
SB 86 – Criminal Records/Expunction/Sealing  
SB 176 – Exemption/Juvenile Blood Tests  
SB 468 – Exemption/School Employees  
SB 584 – Exemption/Shell Bill  
SB 1162 – Exemption/Shell Bill  
SB 1204 – Exemption/Shell Bill  
SB 1246 – Exemption/Shell Bill  
SB 1494 – Exemption/Shell Bill  
SB 1820 – Insurance Companies/Trade Secret Information  
SB 1884 – Exemption/Shell Bill  
SB 1946 – Exemption/Shell Bill  
SB 2028 – Exemption/Shell Bill

SB 2042 – Exemption/Shell Bill  
SB 2044 – Exemption/Shell Bill  
SB 2046 – Exemption/Shell Bill  
SB 2054 – Exemption/Shell Bill  
SB 2142 – Exemption/Foster Parents  
SB 2144 – Exemption/Stalking Victims' Voter Registration Records  
SB 2162 – Exemption/Seaport Authorities  
SB 2432 – Exemption/Home Addresses of Teachers  
SB 358 and SB 1836 – Exemption/Proprietary Business Information  
HB 47 and SB 350 – Entertainment Industry Economic Development  
HB 145 and SB 612 – Exemption/Controlled Substances Database  
HB 221 and SB 1044 – Exemption/Abandoned Properties Registry  
HB 275 and SB 638 – Commercials Use/Crime Scene Photos  
HB 277 and SB 636 – Exemption/Crime Scene Photos  
HB 395 and SB 1416 – Exemption/Collaborative Process  
HB 409 and SB 1260 – Exemption/Identifying Information – Educators, spouse and children  
HB 585 and SB 1354 – Exemption/Controlled Substance Database  
HB 727 and SB 1314 – Exemption/Complaints – Firefighters  
HB 749 and SB 648 – Exemption/Donors – Department of Elderly Affairs  
HB 817 and SB 1488 – Exemption – Cell phone numbers  
HB 851 and SB 1386 – Exemption/Litigation Meetings  
HB 1081 and SB 1366 – Data Destruction  
HB 1159 and SB 1046 – Exemption/Hurricane Protection Program of the Florida Catastrophe Fund  
HB 1421 and SB 594 – Financial Transparency Web site  
HB 1477 and SB 2292 – Internet Publication/Meetings Notices  
HB 699 and CS/SB 1218 – Exemption/Home Addresses – Department of Business and Professional Regulation  
SB 2652 and CS/HB 7115 – Exemption/Office of Financial Regulation  
CS/HB 931 and CS/SB 1368 – Financial Reports – Local Government  
CS/HB 985 and SB 1582 – Exemption/County Ethics Complaints  
CS/HB 1229 and CS/CS/SB 114 – Contaminated Property Notification  
CS/HB 1439 and CS/CS/SB 126 – Access to DCF Records

*Source: First Amendment Foundation, <http://www.flsenate.gov> and <http://www.myfloridahouse.gov>*

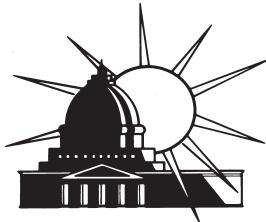
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## If papers can't challenge government who will?

One of the potential tragedies of the economic downturn for American newspapers is that one of our traditional roles — playing watchdog to make sure government is operating openly and in the public's best interest — is growing more difficult.

So who'll do it if we don't?

Does the public have the resources — or even the interest — to make sure their rights are not being infringed upon?

Newspapers, by and large, have long accepted the responsibility of demanding access to public records and judicial proceedings — and, when denied or stonewalled, often filed suit to ensure the information reached the public.

Are you curious about how much your city spends on cell phones? How about the personnel record of a police officer charged with abusive behavior? Are you interested to know how much the school board spends on legal expenses? Travel? Administrative costs?

If the newspapers aren't around to fight for that information, who will?

The bloggers? Please.

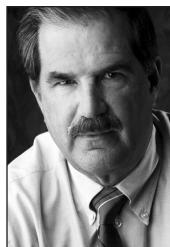
It's no secret that some tax-supported agencies and municipalities want to control the way information comes out. Many want it filtered — or not made available at all — to protect their own interests.

As an example, take the FEMA investigation we did a few years ago. When we found out that FEMA was making payments to Miami area residents for a hurricane that never even hit there, we requested a list of all those receiving funds. FEMA provided the amount of money each person received, but no names or addresses.

We filed suit at a cost of tens of thousands of dollars. Ultimately, FEMA was forced to release addresses, confirming our reporting that the federal government had distributed millions in aid to people never touched by disaster.

Under the financial pressures newspaper companies find themselves facing, can we really afford such costly litigation anymore?

In many cases, yes, we'll still pursue the issues in courts.



*Earl Maucker*

But smaller, less-significant cases likely never will be pursued because of the costs involved.

"While we receive a great deal of public record information that readers of the *Sun-Sentinel* and *sunsentinel.com* benefit from on a daily basis, I think our readers and users would be surprised at the amount of information our reporters must fight for, and how often even a simple request becomes difficult and takes weeks to fulfill," said Kathleen Pellegrino, our newsroom legal advisor.

"We often wonder what happens when members of the public try to obtain records, especially when our own trained information gatherers face this amount of difficulty."

Why is it so important?

Just remember the old adage you learned in grade school: A democracy is a government that is by the people and for the people.

That means it is the people who are sovereign, not the government. The people have the right to be informed of the workings of their government, so that they can hold the government accountable.

We, as citizens, pay the bills and the government works on our behalf.

Public agencies, of course, are obligated to protect certain information from release and the public records law has a large number of exemptions.

But, in many cases, we're talking about basic, routine information, which is becoming increasingly hard to access.

"But it is astounding and frustrating, having watched this process for many years, to see the amount of energy invested in what seems like delay tactics," Kathleen said.

And secrecy, as we know, can lead to serious misbehavior by government officials.

All of this will require the news organizations to be more selective in the challenges we make, and the suits we may file. We may have to unite more often with other news organizations in those efforts.

And, we hope the public will exercise their rights to information and when there are struggles, bring them to our attention so we can make the issue public.

*Earl Maucker is the editor of the South Florida Sun-Sentinel.*