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# THE BRECHNER REPORT

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## Crist vetoes two public records exemption bills

TALLAHASSEE – Gov. Charlie Crist vetoed two bills passed during the 2009 legislative session that would have created public records exemptions for the identity of donors to publicly owned buildings and for proprietary business information of telecommunications and broadband companies.

Senate Bill 166 would have created 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 desired

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to remain anonymous.

In a letter explaining his decision to veto S.B. 166, Crist wrote that the bill did not “provide a sufficient mechanism for public oversight and accountability” and would be contrary to Florida’s public policy for open and transparent government operations.

House Bill 7093 would have created a public records exemption for proprietary confidential business information obtained from telecommunications companies and broadband companies by the Department of Management Services.

In a letter explaining his decision to veto H.B. 7093, Crist wrote that the bill’s definition of “proprietary confidential business information” was overly broad and recommended the state legislature revisit the issue.

Crist also approved H.B. 7051 amending the exemption for the social security numbers of current and former government employees to allow members of the media access to all social security numbers for the purpose of identity verification.

*Source: First Amendment Foundation and [www.leg.state.fl.us](http://www.leg.state.fl.us).*

## Electronic court recordings are public records

TALLAHASSEE – The Florida Supreme Court in a unanimous decision ruled that electronic recordings of court proceedings are public records.

The Court’s ruling reversed a lower court decision blocking access to electronic recordings and also rejected recommendations from a judicial commission that electronic records not be made public unless approved by the trial court or chief judge.

The Florida Supreme Court said that both the district court’s ruling and the judicial commission’s recommendations blocking access were contrary to the

state’s open government tradition.

In addition, the justices noted that the recordings had provided useful and reliable records since being authorized by judicial rule in 1995.

In May, the 2<sup>nd</sup> District Court of Appeals upheld a Pasco County judge’s ruling denying a public records request from *The Tampa Tribune* for audio recordings of a sentencing hearing. The appellate panel said that the electronic recordings did not constitute a court record subject to the Public Records Law because the records were used to create the official court record, but were

not an official record of court business.

“It’s a wonderful decision for the public because it ensures that what happens in a courtroom—and is recorded—can be listened to by any citizen,” said Gregg Thomas, a Tampa attorney, according to *The Ledger*. “Government has spent an enormous amount of money providing for digital recordings. Now the Supreme Court has guaranteed that anyone who wants to can listen to what happens in a courtroom in Florida.”

*Source: The Ledger and <http://tbo.com>*

## Hiring process in Marion County under scrutiny

MARION COUNTY – A grand jury concluded that although the county commission did not break the law in hiring a new county administrator, the process violated the “spirit” of the Sunshine Law.

As a result, the grand jury recommended that county administrator Lee Niblock, who was hired in February, resign immediately or not seek extension of his three-year contract with the city.

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Niblock was hired by the county commission two days after former county administrator Pat Howard resigned.

The grand jury found no evidence of a violation of the state’s Sunshine Law. However, in its report, the grand jury condemned the lack of public discussion, input or notice associated with Howard’s resignation and Niblock’s hiring. The hiring, “if not done with the intent to keep the matter as private as possible in clear violation of the spirit of the Sunshine Law, certainly had that effect,” stated the report,

according to the *Ocala Star Banner*.

The grand jury disapproved county staff and commissioners communicating via e-mail outside of the county’s e-mail.

In its recommendations, the grand jury called for the commission to revise hiring policies to require “a full and open hiring process,” according to the *Ocala Star-Banner*.

The county commission said it will begin working on setting new policies for selecting future administrators.

*Source: Ocala Star-Banner*

## ACLU gets torture memos but still seeks photos

WASHINGTON – After years of litigation, the Justice Department released four secret memos issued by the department’s Office of Legal Counsel between 2002 and 2005.

The American Civil Liberties Union sued for the memos, which detail interrogation practices used by the Bush administration against suspected terrorists, under the Freedom of Information Act.

In releasing the previously classified memos, President Barack Obama said he decided to release the memos because much of the interrogation procedures described in the memos had already

been widely reported on, some had been discussed by the previous administration and he’d already discontinued the use of those practices through executive order.

Meanwhile, the ACLU’s three-year battle for more than 40 prisoner abuse photos from Afghanistan and Iraq requested under FOIA continues after the Obama administration reversed its earlier position to comply with a federal court order requiring the photos’ release.

In June, the 2<sup>nd</sup> U.S. Circuit Court of Appeals, which originally had ordered the photos released, recalled its order, allowing for the Obama administration to decide whether to ask the U.S. Supreme

Court to hear the case.

Also in June, the U.S. Senate approved by unanimous consent the Detainee Photographic Records Protection Act, which allows the protection to withhold photos of detainees.

A companion bill is pending in the U.S. House of Representatives. The bill would require the Secretary of Defense certify that release of the images would endanger U.S. citizens and troops. The ban would expire after three years, unless certification is renewed.

*Source: The Reporters Committee for Freedom of the Press, [www.gosanangelo.com](http://www.gosanangelo.com) and <http://www.house.gov/>*

## Office of Administration not subject to FOIA

WASHINGTON, D.C. – The U.S. Court of Appeals for the District of Columbia upheld a lower court ruling that the Office of Administration does not have to make records available for public inspection as required by the Freedom of Information Act, although it has in the past.

The court held that the Office

of Administration, which provides administrative services to the president, does not meet the definition of federal agency under the FOIA because it lacks substantial independent authority.

The Citizens for Responsibility and Ethics in Washington filed the lawsuit in 2007 to compel disclosure of records related to millions of missing White House

e-mails during the Bush Administration. The Office of Administration provided some of the records before arguing that it was not subject to FOIA.

A number of organizations have asked the Obama administration to reverse the Bush White House position.

*Source: Reporters Committee for Freedom of the Press*

## FIRST AMENDMENT

### Schools promoting religion sued

SANTA ROSA COUNTY – The American Civil Liberties Union and the ACLU of Florida won a lawsuit against the Santa Rosa County School Board filed on behalf of two high school students who alleged school officials regularly promoted religion at school events.

The lawsuit, filed in August 2008, alleged that school officials had violated the Establishment Clause of the First Amendment on multiple occasions.

A judge for the U.S. District Court for the Northern District of Florida approved a consent decree and order, in which the district admitted wrongdoing, and set out terms to bring the school district in compliance with the U.S. and Florida constitutions.

In the order, Judge M. Casey Rodgers ruled that the school board had violated the First Amendment and the “no aid” provision of the Florida Constitution. The order permanently enjoined school officials from endorsing or participating

in prayers during school events, from planning, organizing, financing, promoting or sponsoring religious services, from holding school events at religious venues when secular venues are available and from promoting their religious beliefs to students in class or at school events, according to *Santa Rosa’s Press Gazette*.

The district was also ordered to pay damages of \$1.00 to each plaintiff and school officials were ordered to comply with the Federal Equal Access Act.

“Religious freedom is best promoted when the government stays out of religion,” said Benjamin Stevenson, an ACLU of Florida attorney who led the case, according to *Santa Rosa’s Press Gazette*. “This is a truly victorious day for the constitution and for religious freedom in Florida.”

*Source: Santa Rosa’s Press Gazette and <http://www.aclufl.org/pdfs/srosaconsent.pdf>*

### Redesigning Recovery.gov

WASHINGTON – The U.S. General Services Administration announced an \$18 million redesign of *Recovery.gov*, the Web site that allows taxpayers to track how stimulus funds are being spent.

#### NEW TECHNOLOGY

According to the GSA, *Recovery.gov* 2.0 will be more user-friendly and include interactive technologies for taxpayers to understand how their money is spent. The Web site is expected to be completed in October.

“Armed with easy access to this information, taxpayers can make government more accountable for its decisions,” said James A. Williams, Commissioner of GSA’s Federal Acquisition Service in a press release.

*Source: <http://www.gsa.gov> and <http://abcnews.go.com/>*

## Water board loses approval authority

PALM BEACH – The South Florida Water Management District’s governing body voted to transfer the power to issue permits from the governing board by vote in an open meeting to the office of the executive director.

The change, made under a broad interpretation of a bill recently signed

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into law by Gov. Charlie Crist, means that

the largest of Florida’s five water management districts will no longer vote on whether to issue a permit in open meetings.

Under the new policy, applications for permits will be posted on the agency’s Web site, [www.sfwmd.gov](http://www.sfwmd.gov), where the public will be able to review and comment on the request. The public will also be able to comment at monthly meetings held by the governing board. The decision to issue permits, however, will be made by the office of the executive director.

Further, the new law prohibits board members from “intervening” in pending permit applications, according to *The Palm Beach Post*.

Source: [www.palmbeachpost.com](http://www.palmbeachpost.com)

## THE BRECHNER REPORT

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## ACCESS RECORDS

### School board attorney fined

POLK COUNTY – School Board Attorney Wes Bridges was ordered to pay \$475.50 in fines and costs by a county judge after pleading no contest to violating Florida’s Public Records Law.

Bridges refused to comply with a public records request for the names, addresses, ages and telephone numbers of everyone covered under the school district’s health insurance plans and that of their spouses and dependents.

The requestor, Joel Chandler, a Lakeland resident, requested the same information in each of the 67 school districts in Florida last year.

After Bridges’ refused to provide

the records, Chandler filed suit. Circuit Judge Roger Alcott, of the 10<sup>th</sup> Judicial Circuit, ruled in Chandler’s favor ordering the school district to release the information that had been requested.

Chandler’s statewide requests spurred the Florida Legislature to pass CS/HB 135, which 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. The bill was signed into law by Gov. Charlie Crist in June.

Source: *Fort Meade Leader*

### Access to depositions limited

CLEARWATER – A Pinellas-Pasco County judge granted a request by attorneys for Nick Bollea, Hulk and Linda Hogan’s son, limiting access to depositions in a multi-million dollar auto negligence lawsuit against him.

The judge agreed with Bollea’s attorneys in limiting the media’s access to only those depositions required to be filed in court in connection with the case.

The motion also requested that neither the media nor members of the

public be allowed to attend depositions.

The suit was filed on behalf of John Graziano, who was injured when he rode as a passenger in Bollea’s car during an August 2007 car crash allegedly resulting from car racing.

County Judge W. Douglas Baird granted the request stating that the rules of civil procedure already prohibit attendance during depositions and require that depositions should not be filed unless related to court actions in a case.

Source: *The Lakeland Ledger*

### Blogger sues after being identified

JACKSONVILLE – A blogger is suing the Jacksonville Sheriff’s Office and State Attorney’s Office for violating his First Amendment rights when his identity was revealed in the course of a criminal investigation of his then anonymous blog.

The criminal investigation was opened after church officials reported “increasing vitriol,” on the blog. The investigation concluded last year and did not result in criminal findings, according to the *Florida Times-Union*.

The blogger, Thomas Rich, is suing for violating his First Amendment rights of establishment, speech and anonymity.

Rich was a member of First Baptist Church for 20 years and in August 2007 began an anonymous blog in which he

was critical of the church’s pastor, fundraising and ministry objectives, among other things.

Rich said he wanted to remain anonymous to keep the focus on the issues and because he feared retribution, according to the newspaper.

He is seeking damages of at least \$15,000 for distress suffered as a result of being barred from attending the church.

Assistant State Attorney Stephen Siegel is also named as a defendant in the suit because he approved requests for subpoenas to Google and Comcast for all the information related to the blogger.

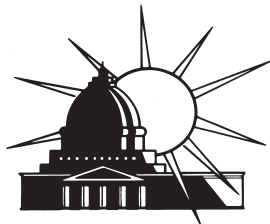
Source: *Florida Times-Union*

## FIRST AMENDMENT

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## Reporter gets governor's help in quest for records

At first it appeared that our state government, the same one so widely touted for giving us access to public records, was going to keep secret the names of state employees who get both a pension and a salary.

After two weeks of struggling with officials at the Department of Management Services and getting help from public records Czarina Pat Gleason in the governor's office, I still didn't have the list of names.

I had a report indicating that more than 8,000 members of the state retirement system, which serves employees in 900 city and county government agencies as well as the state were classified as "renewed members" of the system. The number included more than 200 senior management officials and more than 200 elected officials, so I asked for a list of those.

**The Back Page**  
By Lucy Morgan

The Florida Legislature, in its wisdom – or lack thereof – passed a law making lists of retirees exempt from the Public Records Law and that's what state officials were relying on when they refused to cough up the list. Individual figures are a public record but if you didn't have the names, you couldn't get the information.

I had argued, without success, that these people were hardly "retired." They were back at work drawing a salary and working toward a second pension.

Shortly after 3 p.m. on a Friday afternoon in February, Pat Gleason called my cell phone. She had spent valuable hours trying to break the record free with no results.

So I dialed up the governor. I left a message on his cell phone and he shortly returned the call.

"Governor, I have a problem with one of your agencies," I said explaining that I was about to write a story telling Floridians about this secret payroll. Actually, it was a better story if they refused to give me the list.

But Gov. Crist has repeatedly pledged to make open government a centerpiece of his administration, so I thought I would ask for his help. Without hesitation, the governor said, "You will have that list today."



Lucy Morgan

A few minutes later, Pat Gleason called back. The Division of Retirement had been ordered to transmit the list to her and she would deliver it to me.

By 7 p.m. I had the list. Unfortunately it didn't include anything but the names, nothing to identify where they worked or how much money they were being paid by the state.

So I spent the weekend on Google. Working through the list, I was able to identify most of the elected officials, but not all of the others.

On Monday, I went back to Management Services with a new request: the figures that would match my list so I could tell how much money taxpayers were spending for salaries, pensions and deferred benefit payments collected by many of them.

To get the information I had to submit a copy of my list – they were still not coughing up anything that looked like a list of retirees.

A few days later, I finally had the numbers to go with the names. College presidents, judges, sheriffs, tax collectors, clerks – even a Supreme Court Justice – were secretly collecting pensions AND salaries. And many of them also collected a Deferred Retirement Option Program benefit totaling as much as \$893,000 when they "retired."

The howls of outrage from readers of our "double dipping" stories threatened to derail everything else I was doing. Never, in 44 years of writing about Florida government, have I heard so much from so many. Calls, emails, letters, all really angry with the Legislature.

A few legislators rose to the occasion, introducing bills to fix the problem. But it has yet to happen. Could it be because a couple of dozen of them are among the double dippers?

Meanwhile Gov. Crist has refused to help elected officials become double dippers, who need him to appoint a substitute while they take a 30-day "vacation" before returning to work.

*Lucy Morgan retired as chief of the St. Petersburg Times Tallahassee bureau in January 2007. She is currently a senior correspondent at the newspaper.*