
THE BRECHNER REPORT

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Review finds Orange County officials delete texts

ORLANDO – A study found that leaders of some of Central Florida’s largest governments have been deleting text messages that would likely be considered public records under Florida law, according to the *Orlando Sentinel*.

The *Sentinel* made a public records request for text messages from all governing board members and one senior staff member from six local governments: Orange County, the city of Orlando, the Greater Orlando Aviation Authority, the Orange-Orlando County Expressway Authority, the Orange County School Board and the

University of Central Florida (UCF). The request sought all text messages sent or received since July 1 discussing public business, the *Sentinel* reported.

Only two governments provided what they said were all of the text messages.

The city of Orlando turned over 218 pages of screen shots detailing hundreds of texts to and from Mayor Buddy Dyer, his chief of staff and city commissioners.

UCF turned over 21 texts, all taken from the phone of President John Hitt, the *Sentinel* reported.

The review found that public officials

have sometimes used text messaging for substantive discussions with lobbyists and others, according to the *Sentinel*.

Both Orange County and the aviation authority admitted board members and senior staffers have erased or otherwise lost government-related text messages that can no longer be recovered.

The local governments have no formal program in place to track text messages, according to the review. A 2010 Florida attorney general’s opinion says text messages in the conduct of public business are public records that must be archived, according to the *Sentinel*.

Source: *Orlando Sentinel*

U.S. cites national security to censor more records

WASHINGTON, D.C. – The Obama administration answered an increased number of requests to see government records under the Freedom of Information Act in 2012, but also cited legal exceptions to censor or withhold the material at a higher rate than ever before, according to *The Associated Press*.

In 2012, citizens, journalists, businesses and others submitted 590,000 requests for government information – an increase of less than 1 percent from 2011, according to *The AP*.

The government responded to more than 603,000 requests, including requests left over from prior years, a 5 percent increase from 2011, *The AP* reported. It fully rejected more than one-third of

requests, a rate slightly greater than the previous year.

When withholding or censoring records, the government cited exceptions built into the law to avoid turning over records more than 479,000 times, a 22 percent increase from 2011, according to *The AP*.

In most cases, more than one of the law’s exceptions was cited to deny access to the information.

In at least 5,223 instances, the Obama administration cited national security to withhold documents, *The AP* reported.

Other agencies that invoked the

national security exception included the Pentagon, Office of Management and Budget, Federal Communications Commission and Department of Justice.

“FOIA is an imperfect law, and I don’t think that’s changed over the last four years since Obama took office,” said

Alexander Abdo, an ACLU staff attorney, according to *The AP*. “We’ve seen a meteoric rise in the number of claims to protect secret law, the government’s interpretations of laws or its understanding of its own authority. In some ways, the Obama administration is actually even more aggressive on secrecy than the Bush administration.”

Source: *The Associated Press*

Group asks for change to campaign finance limits

TALLAHASSEE – Integrity Florida, a nonprofit, independent advocacy group, has asked the House Ethics and Elections Committee to allow unlimited campaign financing in exchange for public disclosure of all donors, according to *The Miami Herald*.

Disclosure would be made within 24 hours of funds being deposited into any

state or local campaign account and expenditures paid.

Florida has required political contributors to limit donations to candidates to \$500 in the primary and another \$500 in the general election, *The Herald* reported.

Those limits have been outmatched by money pouring into the system through

Super PAC contributions and following a 2010 U.S. Supreme Court decision recognizing corporate contributions as political speech, according to *The Herald*.

In the 2011-12 election cycle, Integrity Florida found that about three out of every four dollars – about \$230 million out of \$306 million – went to parties and political committees, which are subject to fewer disclosures.

Source: *The Miami Herald*

ACCESS
RECORDS

FREEDOM
OF INFORMATION

FIRST
AMENDMENT

1st DCA rules research labs aren't exempt

TALLAHASSEE – A three-judge panel for the 1st District Court of Appeal in Tallahassee unanimously ruled that the University of Florida cannot redact the locations of its animal research labs in response to public records requests.

The university “obscured the physical housing location” of primates used in research, following a request by animal rights activist Camille Marino for records, according to the lawsuit. The university argued the research made the labs more vulnerable to physical threats.

In its opinion, the appellate court ruled, however, that exemptions covering the addresses of sensitive facilities did not specifically extend to such research labs.

The 1st District Court of Appeal remanded the case with instructions to release the records without redaction, according to court’s order. The university does not plan to appeal, according to *The Gainesville Sun*.

Source: *The Gainesville Sun*, *The Associated Press*

Access to court records delayed in some Florida counties

ORLANDO – *The Associated Press* and 31 newspapers throughout the state visited the clerks of court offices in each of Florida’s 67 counties to determine if the county clerks were complying with new Florida law.

The project, directed by the Florida Society of News Editors, was to determine if county clerks of court were complying with the requirements of the new law to purge court records of personal identifying information before releasing them to the public, according to *The Associated Press*.

In many of the 67 counties, the news organizations found that the task has caused delays in the release of records that are available to the public under Florida’s Public Records Law, according to *The AP*.

Even though many records lack such information, Florida law requires every court record to be screened to ensure it is free of personal information, according to *The AP*. Representatives from the media requested to view hard copies of two

civil cases and two criminal cases in each county.

The results found that there was a delay in retrieving records in just over half of the counties because personal information needed to be redacted or because the file couldn’t be found, *The AP* reported. The need to review and redact information led to some kind of delay in more than a fifth of the 268 records requested. Of the 61 files that required some kind of personal information removed, the delay was a day or more in almost two-thirds of the cases.

Although Florida Public Records Law does not specify how long it should take to retrieve a record, courts have ruled that a record should be produced in no more time than it takes to retrieve the record and review and redact exempt information, according to attorney John Kaney, according to *The AP*.

The mandate that personal information be removed from court records before they are produced went into effect last year.

Source: *The Associated Press*

COURTS

Suit charges Manatee County with records violation

MANATEE – A lawsuit filed against Manatee County Commissioner Robin DiSabatino and Manatee County alleges a violation of the Public Records Law.

Plaintiff Michael Barfield made a request for records of all of DiSabatino’s electronic communications, including emails, text messages and social media messages between Aug. 1 and Sept. 30, 2012, according to the *Bradenton Herald*.

The request came from a meeting of the

Board of County Commissioners at which DiSabatino acknowledged having met with former Commissioner Joe McClash after a Sarasota-Manatee Metropolitan Planning Organization (MPO) meeting, the two counties’ transportation planning agency, the *Herald* reported.

“I wanted to get an idea what was going on with the MPO, and Commissioner DiSabatino was unable to fulfill that request,” Barfield told the *Herald*.

DiSabatino said she was having computer issues and had become the victim of a virus that had occurred within a day of Barfield’s request, the *Herald* reported.

“This was an email on a private account the commissioner was using to conduct official business, it was something she shouldn’t have been doing to begin with,” Barfield said, according to the paper.

Source: *Bradenton Herald*

Judge won't seal records in Bears' fan's slaying

DUVAL COUNTY – A judge has declined to grant a request to seal the records of a man on trial for the slaying of a Chicago Bears fan at The Landing the night before a game.

Attorneys from the Public Defender’s Office representing Matthew Reid Hinson, 28, asked Circuit Judge Suzanne Bass to prevent the public from viewing discovery records, including crime scene photos, names of witnesses, 911 calls, surveillance videos and statements

Hinson made to police, *The Florida Times-Union* reported.

Hinson is accused of using a pocket knife to slash William “Chris” Pettry’s throat at a bar the evening before a Bears-Jaguars game, according to *The Times-Union*.

In his motion, Chief Assistant Public Defender Refik Eler asked the judge to seal the records due to the “extensive pretrial publicity” the case has already received, *The Times-Union* reported.

Bass agreed with lawyers from two television stations and *The Times-Union*, finding the request overbroad, and ordered the prosecution disclose the records to the defense, according to the order.

The defense would have five days to review the records and then make requests for specific items to be withheld from the public.

The television stations have the right to challenge those requests, the order stated.

Source: *The Florida Times-Union*

Congress asks for info on key transparency initiatives

WASHINGTON, D.C. – A recent letter from Congress to the U.S. Department of Justice asks what steps the government is taking on a number of key transparency improvements, according to the *Center for Effective Government* (CFG)(formerly known as OMB Watch).

The letter, signed by Darrell Issa (R-Calif.), chair of the House Committee on Oversight and Government Reform and ranking member Elijah Cummings (D- Md.), indicates a bipartisan approach to congressional oversight of the executive branch’s responsibilities to be transparent under the Freedom of Information Act (FOIA), according to CFG.

In the letter, officials asked for information about a number of key issues in FOIA administration, including outdated regulations that may be hampering agency responsiveness to FOIA requests, and the proactive disclosure of information and whether agencies are posting frequently requested records online as required under the Electronic FOIA Act, CFG reported.

Source: *Center for Effective Government*

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UCF sued by student newspaper

ORLANDO – In the wake of the University of Central Florida’s suspension of all Greek life activities, the university is facing a lawsuit by an independent, student newspaper over the suspension decision.

The university halted activities after several hazing scandals, including one at Sigma Chi, in which a photo allegedly depicting hazing activities was posted online, according to *Knight News*.

In the lawsuit, *Knight News* claimed the decision to suspend activities was made behind closed doors.

“This lawsuit is about protecting the

public’s right to know under Florida’s Government-in-the-Sunshine Law and Public Records Act,” said *Knight News* attorney Justin Hemlepp in a statement, according to the newspaper’s website.

Knight News alleges the university violated a number of Florida’s open government laws, including failing to respond to its public records request within a reasonable time and prohibiting access to board meetings where decisions concerning discipline of student organizations were made, according to the lawsuit.

Source: *KnightNews.com*

OPEN GOVERNMENT

DOJ condemns journalist’s arrest

WASHINGTON, D.C. – The U.S. Department of Justice (DOJ) issued a rare letter supporting the First Amendment rights of a photojournalist, who was arrested for taking pictures of on-duty police officers.

In an official letter, the DOJ urged the U.S. District Court in Maryland to uphold citizens’ rights to record police officers in their public capacity without being arrested or having their recordings unlawfully seized, according to the Reporters Committee for Freedom of the Press.

“The United States urges the Court to find that both the First and Fourth Amendments protect an individual who peacefully photographs police activity on a public street, if officers arrest the individual and seize the camera of that individual for that activity,” according to the letter.

In June 2011, freelance photographer

Mannie Garcia was arrested for disorderly conduct when he photographed officers arresting two men “using excessive force,” according to Garcia’s complaint.

Garcia identified himself as a member of the press and did not interfere with police activity, according to the complaint. Though Garcia’s equipment was returned to him when he was later released, his camera’s video card was missing.

The letter is the second time the Justice Department has made a similar filing in support of recording police in public, according to the National Press Photographers Association website, RCFP.org reported.

The first time was in *Sharp v. Baltimore City Police Department*, in which police had confiscated and deleted a man’s video recording of his friend’s arrest.

Source: *RCFP.org*

FIRST AMENDMENT

Fla. bill targets mugshot websites

TALLAHASSEE – A Florida legislator has proposed a bill that would require websites to delete arrest photos if a person is not found guilty or if the charges are dropped.

Representative Carl Zimmerman (D-Palm Harbor) filed the bill, which would require websites to delete mugshots within 15 days of being notified the charges did not result in a conviction, according to *The Associated Press*.

The bill (HB 677) also creates penalties, such as a fine, for a website

operator who fails to comply with a request, or be subject to a defamation lawsuit after 45 days of noncompliance, according to the bill.

Zimmerman decided to sponsor the bill after speaking to a Pinellas County woman who was charged \$300 to have her photo removed, though it was later found she was wrongfully arrested, according to *The AP*. The bill does not differentiate between government, news or commercially run websites.

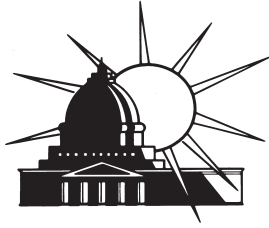
Source: *The Associated Press*

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Service Charges for Public Records a Bar to Access

Public agencies can't refuse a request to inspect or copy public records based upon the quantity of records requested or time frame they cover, but they can charge service fees so high that citizens ultimately can't afford to access the very records to which they have a constitutional and statutory right.

Florida Statute 119.07(4)(d) gives agencies the broad discretion to impose a "reasonable" service charge if "extensive use" of information technology resources or clerical or supervisory personnel is needed in order to produce the records.

However, the statute neither defines "extensive use" nor provides insight into the Legislature's intent. As a result, the practice of charging fees for employee time spent in the search-review-redact process varies widely across agencies.

For example, at least one agency has charged a service fee for an employee's "coordination" of the response to a record request and another employee's time spent locating the documents. In another instance, an agency charged a service fee seven times the cost of the actual copies.

One records custodian has even admitted to charging exorbitant fees in an effort to scare off the requestor.

The Florida Attorney General recently issued an opinion that "strongly encourage[s] the adoption of a policy for accommodating public records requests" when implementing service charges in order to avoid "unreasonable infringement upon the public's statutory and constitutional right of access to public records."

At least one agency has since disclosed that it begins charging for employee time after 30 minutes have accumulated in responding to any one request.

But until every public agency has instituted a clear policy that "reflects the purpose and intent of the Public Records Act," or the Legislature mandates a specific fee schedule (which is more likely) citizens have little recourse than to narrowly tailor their requests and scrutinize agency fees.



*Ana-Klara
Anderson*



*Rachel
Fugate*

While service charges can't be avoided all together, the following are recommendations for avoiding unreasonable fees.

- Can the records be produced electronically? Public agencies are required to produce the record in the format in which it is maintained and may only charge for the "actual cost" of duplication.
 - Is the agency charging for copies made during the redaction process? Agencies may not pass on to the requestor the cost of copies made during the redaction process.
 - How was the fee determined? The hourly service charge should be based on the salary and benefits of the employee who conducted the work. This information is public.
 - Can the tasks for disclosing the record be divided among different agency employees based on their level of expertise and authority? Tasks should be assigned to the appropriate agency employee. For example, a clerk or secretary can be assigned the task of copying or scanning while an agency attorney might review the records for exemptions. No employee should do (and the requestor shouldn't pay for) a task that a lower-paid employee is capable of.
 - Is attorney review necessary? Consider whether certain exempt information contained in the record, such as names of witnesses and social security numbers, is necessary to your overall goal. If not, ask that it be redacted by a clerk in order to avoid the necessity for attorney review.
 - Are there different methods for producing the record? It might take more or less time to redact records electronically versus on paper. Ask for cost estimates for different approaches.
- Ultimately, providing access to public records is a statutory duty and is not an opportunity to generate revenue. Similarly, special service charges shouldn't be used as a tool to discourage citizens from seeking records. We can't afford unreasonable fees or the damage they cause to government transparency.

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editor of The Brechner Report.*