
THE BRECHNER REPORT

Volume 37, Number 5 ■ A monthly report of mass media law in Florida
Published by The Brechner Center for Freedom of Information ■ College of Journalism and Communications ■ University of Florida
May 2013

Fla. bill aims to protect voters' email addresses

TALLAHASSEE – Legislation aimed at protecting voters' email addresses has been proposed in the Florida Legislature.

The legislation would make it possible for voters to give their email addresses to county election offices so they can get sample ballots online, rather than by mail, and study their choices electronically, the *Tampa Bay Times* reported.

If enough voters opt in, counties could save a lot on printing and postage costs.

Elections officials and legislators say that if voters' email addresses were public, they could be contacted by political parties wanting money and candidates seeking support, discouraging voters from giving out their email addresses, according to the *Times*.

The legislation, however, has brought protests from organizations such as the Florida First Amendment Foundation, an open government group backed by many of Florida's newspapers. The organization claims there is no

proof that voters have shied away from the polls because their email addresses are subject to disclosure and that there is no factual evidence that secrecy would prevent voter fraud, the *Times* reported.

Citrus County elections supervisor Susan Gill says that people are fearful of identity theft and complain when they find out their date of birth is public information.

"Sometimes the Sunshine Law can give us a sunburn," Gill said, according to the paper.

Source: *Tampa Bay Times*

PRIVACY

Newspaper wins first round in public records suit

TALLAHASSEE – A judge ruled in favor of the *Tallahassee Democrat* in a public records lawsuit in which the newspaper was denied access to lists of employees, salaries and benefits of a state contractor.

Aramark was awarded a \$42-million contract, which went into effect July 1, from the state's Department of Children and Families to provide housekeeping services at the Florida State Hospital in Chattahoochee, Fla., the *Tallahassee Democrat* reported.

The *Democrat* requested the documents from Aramark under

Florida's Public Records Law, but was denied access to the records by the company. The contract resulted in 111 DCF workers losing their state jobs, requiring them to reapply with Aramark.

The *Democrat* filed a request in July to see how many state workers Aramark hired and what benefits and pay they would receive.

Gadsden Circuit Judge James O. Shelfer ruled that the information the newspaper requested fell under the Public Records Law because the hospital

is an important public facility and its housekeeping services are crucial to its operation.

Newspaper attorney Michael Glazer said that while the ruling would not create new policy, it confirms a certain level of access Floridians have to certain documents managed by private vendors acting as agents of the state, the *Democrat* reported.

Shelfer ordered a temporary stay, however, to withhold the documents pending Aramark's appeal.

Source: *Tallahassee Democrat*

ACCESS RECORDS

Windermere awarded \$90K in Sunshine lawsuit

WINDERMERE – In a final judgement, Judge Robert Egan of the 9th Judicial Circuit awarded the town of Windermere \$90,435 in attorneys' fees and other court costs in a lawsuit for alleged Sunshine violations.

Plaintiff James Andrew McCarthy, Jr. sued town councilman Richard Irwin and the town of Windermere claiming Irwin violated the Open Meetings Law

by conducting public business via email.

Judge Egan ruled, however, that "nothing in the record evidence indicates or establishes that what was being exchanged in the subject e-mails was discussion or a 'meeting,' for purposes of the Government-in-the-Sunshine-Law, among or between the individual town council members and mayor," according to the judge's order.

The emails were sent regarding Irwin's view about the termination of the town manager and cost information related to a proposed separation agreement, the order stated.

Town attorney Tom Wilkes told *The West Orange Times* that the town still has to recoup the fees from McCarthy.

The initial dispute originated in 2008 involving the installation of a storm water berm and draining issues.

Source: *The West Orange Times*

ACCESS MEETINGS

Florida teachers union challenges release of data

DUVAL COUNTY –Attorneys for the state’s teachers union, the Florida Education Association (FEA), have joined forces with the state to prevent disclosure of controversial teacher value-added data.

Value-added data refers to the difference between the learning growth a student makes in a teacher’s class and the statistical predicted learning growth that student should have earned based on previous performance, according to *The Times-Union*. The value-added calculation

constitutes half of the teacher’s total evaluation, the other portion consisting of observations made by principals and other personnel.

The Florida Times-Union filed a lawsuit after the state General Counsel’s Office went back on its decision to release the information, stating it would request an Attorney General’s opinion asking if the information was public record, according to the paper. The FEA joined the suit, arguing the information

requested by *The Times-Union* falls into an exception to the Public Records Law, *The Times-Union* reported.

The Times-Union filed the lawsuit four months after the department failed to respond to the newspaper’s request.

The lawsuit claims that the department’s failure to respond to the request within a reasonable amount of time “is a refusal to perform an official ministerial duty in violation of” state law.

Source: *The Florida Times-Union*

Winter Haven officials refuse to disclose letter

WINTER HAVEN – Winter Haven officials have refused to release a letter from officials of The Landings, a mixed-use development in Winter Haven, even though lawyers representing *The Ledger* say the letter is a public record.

Lawyers representing The Landing financier Taylor Pursell sent the letter to the city attorney. City officials would not release the document to *The Ledger*, citing a Florida statute that says any communication in mediations be kept confidential, according to *The Ledger (Lakeland)*.

The newspaper’s attorney argued that the statute city officials are using to withhold the document applies only to court-ordered mediations and not to the current mediation between the city and The Landings, *The Ledger* reported.

The attorney also argued that the city is not actually involved in the mediation because a third-party mediator has not been chosen, according to *The Ledger*.

Attorneys for the city cite a change made to a statute by the Legislature in 2004 to remove language requiring that the mediation be court-ordered. City

attorneys also state that even if mediation is not already occurring, the statute allows for the confidentiality of communications leading up to the mediation.

The parties are left to argue statutory language until a judge can decide the case, because there appears to be no existing case law or attorney general opinions on the interpretation of the law, *The Ledger* reported. The letter discusses the possibility of whether The Landings can still take over the city-owned Chain of Lakes complex, according to the paper.

Source: *The Ledger (Lakeland)*

School board member cleared of records violation

MANATEE COUNTY – State prosecutors declined to file charges against Manatee County School Board member Julie Aranibar over a potential public records violation, citing insufficient evidence that the school leader knowingly withheld text messages.

Local school activist Christina Sket made a request for all text messages sent and received by board members during a Sept. 10 board meeting, the same day that former superintendent Tim McGonegal resigned amid an unfolding budget crisis, according to the *Venice Herald Tribune*.

Sket said she saw several board members texting at the meeting and

that one of the board members made a comment suggesting she had received text messages during the meeting.

Aranibar said she had nothing to produce related to Sket’s September request, the *Herald Tribune* reported.

School employees’ text messages are public record in Florida if they pertain to school business.

The State Attorney’s Office concluded the board members were not conducting business with each other in secret. Officials also said there was not enough evidence to prove that board members knowingly failed to present text messages in response to the records request,

according to the *Herald Tribune*.

Sket filed a report with the Sheriff’s Office and provided copies of text messages showing Aranibar engaged in a brief text conversation with former school board candidate Robert Moates on the evening of Sept. 10, reported the *Herald Tribune*.

Aranibar said the message was missing from her phone because a virus had affected her computer and phone in late September, causing her to lose data.

A detective in the investigation confirmed with a computer expert that this was not plausible, according to the paper.

Source: *Venice Herald Tribune*

RCFP urges court to unseal records in patent dispute

WASHINGTON, D.C. – The Reporters Committee for Freedom of the Press (RCFP) argued in favor of unsealing documents in the multi-billion-dollar *Apple v. Samsung* patent case.

The Reporters Committee, joined by seven other media organizations,

filed a friend of the court brief in the U.S Court of Appeals for the Federal

Circuit, arguing that records in the smartphone patent lawsuit should be made public, according to RCFP.org. Both Apple and Samsung appealed a district court’s ruling in favor of a partial unsealing.

“These parties have taken their lawsuit into an open, public courtroom, leaving no stone unturned in the prosecution of their claims, and now are attempting to stretch trade-secret protections to become congruent with their own corporate boundaries, the Reporters Committee brief argued.

Source: *RCFP.org*

COURTS

Group wants more transparency

TALLAHASSEE – A report by Florida TaxWatch said the process by which people injured by the government collect damages in the form of claims bills passed by lawmakers is arbitrary, political and lacks transparency.

The report also found that there's been an increase in the amount of claims bills, the *News Press (Ft. Myers)* reported. Last year, 11 claims bills were passed by the Florida Legislature, awarding nearly \$40 million, including the first two ever claims bills for more than \$10 million.

Twenty-five claims bills filed for this session seek more than \$50 million in total damages, according to the *News Press*.

The government spending watchdog group recommended several changes including a cap on non-economic damages, creating an expedited process to deal with settled claims bills and a limit on lobbying fees, the *News Press* reported.

The group also suggested reducing what people collect and requiring the local legislator representing the injured person file the claims bill, according to the paper.

Source: *News Press (Ft. Myers)*

State legislature posts employee contracts, salaries online

TALLAHASSEE – Nearly two years after Gov. Rick Scott posted the salaries of most state workers, the two Republican leaders of the Florida House of Representatives and the Florida Senate added links on legislative websites that allow people to access legislative employee salaries, according to *The Associated Press*.

The two chambers are also posting copies of contracts, *The AP* reported.

The website shows that 32 employees in each of the House and Senate earn at least \$100,000 a year.

Ryan Duffy, spokesman for House Speaker Will Weatherford, said the

records posted by the legislative leaders are the ones most frequently requested, according to *The AP*.

“We thought it would be easiest for access by putting them online,” Duffy told *The AP*.

The disclosure follows a decision by Scott to discontinue Transparency 2.0, a budget-tracking website the Senate paid \$5 million to develop, *The AP* reported.

Scott failed to renew the contract with the developers of the website, which expired Dec. 31, because it was developed through a no-bid contract.

Source: *The Associated Press*

Decree protects panhandler's rights

SARASOTA – The city of Sarasota and the American Civil Liberties Union (ACLU) signed a consent decree that prevents police officers from “interfering with the exercise of First Amendment rights” of homeless individuals.

The decree prevents police from arresting a panhandler unless the person impedes traffic, pedestrians or creates an unsafe situation, according to the *Manatee Herald Tribune*.

The decree also bars officers from ordering panhandlers to move along, a common complaint among the homeless.

The city signed the decree following the arrest of John Hill, who was taken into custody for panhandling on U.S. 301, the

Herald Tribune reported.

Hill, who spent five days in jail until the ACLU secured his release by filing an emergency writ of habeas petition, said he was injured during his arrest when an officer slammed his face into a squad car, according to the *Herald Tribune*. The arresting officer said Hill intentionally threw himself forward during the struggle, striking his head on the car window.

An internal affairs investigation of Hill's arrest has since been ordered, according to the *Herald Tribune*.

The decree ends in 60 days unless there are violations, at which point the court can extend the order, the paper reported.

Source: *Manatee Herald Tribune*

FIRST AMENDMENT

Officials withheld meeting notice

WINTER HAVEN – People who may have wanted to comment or hear the discussion related to two issues before the Winter Haven commission had no way of knowing they were being taken up by the commission.

Commissioners at a Winter Haven public meeting terminated all contracts with a mixed-use development called The Landings and rejected all bids in a proposal to privatize the city's garbage collection without placing the items on the meeting agenda, according to *The Ledger (Lakeland)*.

State Attorney General Special Counsel

Pat Gleason said action on the two items should have been put off until another meeting to allow for public notice in order to comply with the spirit of the state's Open Government Law, *The Ledger* reported.

This is not the first time the commission has acted without notice, according to *The Ledger*.

Three of the most controversial votes commissioners have taken in the past six months have all been made on motions brought by commissioners that were not on the agenda.

Source: *The Ledger (Lakeland)*

ACCESS MEETINGS

THE BRECHNER REPORT

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

Sandra F. Chance, J.D., Exec. Director/Exec. Editor
Kara Carnley, Editor
Alana Kolifrath, Production Coordinator

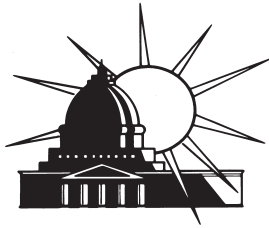
The Brechner Report is published 12 times a year under the auspices of the University of Florida Foundation. *The Brechner Report* is a joint effort of The Brechner Center for Freedom of Information, the University of Florida College of Journalism and Communications, the Florida Press Association, the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

THE BRECHNER REPORT

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

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

May 2013



UF UNIVERSITY of FLORIDA

Fresh thinking about FOIA: tools and creativity

The Obama Administration prides itself on using the power of the Internet to keep the federal government in touch with the public and, in some ways, it has even proven to be fairly good at it.

The White House's We The People petition site, for example, has given lots of Americans the ability to let the president know what issues are important to them. Petitions on the site have been responsible for release of items of interest ranging from the White House's recipe for Honey Ale to the administration's official public stance on the creation of a Star Wars-style Death Star in order to improve the economy.

Those "successes" in this area, however, make it all the more disappointing that the administration has not invested the same kind of technology and ingenuity into answering requests

The Back Page

By: Amy Bennett

for government information under the Freedom of Information Act (FOIA). The FOIA is a system that has been drowning under its own weight for years. Despite a requirement under the law to respond to requests within 20 working days, requesters commonly have to wait much longer, sometimes even years to get documents from agencies. The attorney general and agency heads have been beating the drum on backlog reduction for years, but the number of requests waiting in the line remains stubbornly high.

The system is confusing, too. Except for requesters with intimate knowledge of FOIA and the federal government, simply determining the appropriate place to send a FOIA request can be challenging.

Once the request is made, the method of finding the request's position in the queue differs from agency-to-agency. Agencies still commonly respond to requests for electronic documents with printouts.

Sometimes it is hard not to draw the conclusion that federal agencies are making the system as confusing as possible in the hope that requesters will just go away.

Technology alone cannot fix the FOIA. But technological tools and creativity, smartly applied, certainly can make



Amy Bennett

it easier for the public to file requests and get government information in a timely fashion and usable format.

It is easy enough to imagine a website where a requester could log on and make requests across the federal government. If the request needed to be transferred to another office that has responsive records, the action could be done within the system. Requesters could correspond with the agency through their accounts. Requesters could be given a due date of when to expect a response to their request. Any

documents released could be available through the requester's account. All documents released under the FOIA could also be available online in a searchable central repository, cutting down on the number of duplicate requests.

It is especially easy to imagine such a system because some agencies in the federal government are already using it.

The system is called FOIAonline and it is currently housed at the Environmental Protection Agency (EPA). The multi-agency Web-application can only be used to make requests at a handful of participating agencies right now, and it is still far from perfect.

The "expected due date" for a response, for example, is just the statutory 20-day time limit, which we know many agencies do not achieve. FOIAonline's developers and supporters within the government have been open about the system's limitations, however, and are eager to make improvements.

White House backing for FOIAonline would likely jumpstart improvements to the Web-application and push more agencies into using the system.

On his first day in office, President Obama committed to creating "unprecedented levels of openness in Government." To help fulfill that promise, it is time for the Administration to embrace new ways of thinking about how to give the public information they want. It's time for the White House to embrace FOIAonline.

Amy Bennett is the Assistant Director of OpenTheGovernment.org, which seeks to advance the public's right to know and to reduce secrecy in government.