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# THE BRECHNER REPORT

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## U.S. Supreme Court upholds Virginia FOI law

WASHINGTON, D.C. – A unanimous U.S. Supreme Court ruled that states are free to let only their own citizens make requests under their freedom of information laws, according to *The New York Times*.

In *McBurney v. Young*, the justices upheld a Virginia law limiting out-of-state residents’

access to public records, according to *The Washington Post*. In doing

so, the Court dismissed arguments that the public and the press hold broad rights of access to government information across state lines, holding that the states do not violate the U.S. Constitution when their public records laws prevent out-of-state residents from accessing government records, according to the Reporters Committee for Freedom of the Press.

The case arose when residents

of California and Rhode Island challenged a Virginia law granting “citizens of the Commonwealth” but no one else the right to inspect and copy “all public records,” *The Wall Street Journal* reported.

The residents claimed the law violated portions of the Constitution meant to put residents of states on equal footing within the context of fundamental rights, according to *The Post*.

In the opinion written by Justice Samuel Alito, the Court found that access to state government information wasn’t among the “fundamental” privileges and immunities that needed to be honored across state lines, according to the opinion. According to Alito, “requiring noncitizens to conduct a few minutes of Internet research in lieu of using a relatively

cumbersome state FOIA process cannot be said to impose any significant burden,” adding that most of the information is available in other ways, the opinion stated.

In an amicus brief, the Reporters Committee for Freedom of the Press argued that the Virginia Freedom of Information Act (VFOIA) hurt the media’s ability to do its job.

“By largely limiting public records access in Virginia to commonwealth citizens, VFOIA inhibits the media from acquiring newsworthy records and stymies efforts to provide state-by-state comparisons on important topics such as public education, healthcare, and law enforcement activities,” the brief stated.

More than half a dozen other states have similar laws, according to *The Journal*.

Sources: *The New York Times*, *The Wall Street Journal*, *The Washington Post*, *RCFP.org*

FREEDOM  
OF INFORMATION

## AEJMC takes stance against leak prosecutions

WASHINGTON, D.C. – In a recent statement, the Association for Education in Journalism and Mass Communication (AEJMC) took a stance against the current administration’s prosecution of those who have leaked secret information.

In a statement, AEJMC wrote that “[t]he Pentagon Papers, Watergate, the Iran-Contra affair and the existence of clandestine CIA prisons are examples in which secret government information was leaked to and publicized in the news media.

“In these and in many other cases, the dissemination of secret information served a greater good to American society by informing the public and by allowing for a needed debate on the ethics of secret government policies

and covert actions,” according to the statement.

The statement noted the six charges brought by the current administration under the Espionage Act illustrate the “current administration’s zeal in prosecuting those in government who leak secret information.”

In its first 92 years, the Act was used only three times to prosecute government officials for leaking information, according to the statement.

The statement said the prosecution of U.S. Pfc. Bradley Manning, who is charged with leaking secret government documents to the WikiLeaks website, appears to be “excessively punitive, with a chilling effect on a democracy’s

requisite freedom of speech and the press.”

The prosecution also “sends a message to the rest of the world that the United States’ actions are not fully aligned with its stated ‘exceptional’ commitment to freedom of speech and the press as a

human right,” according to the statement.

The statement said the organization is “committed to freedom of speech and the press in the United States and abroad” and “believes that this commitment must include a free exchange of information and ideas, even some information that the U.S. government considers or wishes to be ‘secret.’”

Source: *Association for Education in Journalism and Mass Communication*

FIRST  
AMENDMENT

## Appeals court says requesters can immediately sue

WASHINGTON, D.C. – A federal appeals court ruled that individuals seeking records under the federal Freedom of Information Act (FOIA) can immediately sue agencies that do not respond to their requests in a timely manner.

A three-judge panel for the U.S. Court of Appeals for the D.C. Circuit unanimously ruled that requesters may immediately sue a government agency if the agency does not adequately respond to the request within 20 days without filing an administrative appeal, according to the opinion.

Previously, federal agencies interpreted FOIA as requiring only that the agency acknowledge the request within 20

working days – or up to 30 days in “unusual circumstances” – and that the agency was not required to detail what documents it would produce and why, according to the Reporters Committee for Freedom of the Press. A requester had to exhaust an appeals process before filing suit, which would ultimately delay the requester’s ability to access a record.

Writing for the panel, U.S. Circuit Judge Brett M. Kavanaugh ruled requesters could immediately file a lawsuit against the agency if it failed to provide its “determination” within the 20 days.

The issue arose when Citizens for Responsibility and Ethics in Washington (CREW) filed a FOIA request with the

Federal Elections Commission (FEC) in February 2011. A day later, the FEC acknowledged CREW’s request and agreed to hand over all non-exempt documents, but never specified what documents would be sent over or the exemptions that applied.

CREW filed suit in May after failing to receive any documents, according to the Reporters Committee for Freedom of the Press. The FEC argued CREW should have filed an administrative appeal before suing since they technically responded to the request within 20 working days, according to RCFP.org.

Sources: RCFP.org, *Citizens for Responsibility and Ethics in Washington*

## Computer system blamed for LPD records lapse

LAKELAND – The Lakeland Police Department (LPD) blames its “antiquated” computer system for its inability to find records related to a newspaper’s request for records, according to a statement by the department.

Twice in two months, LPD was unable to produce records requested by *The Ledger*, stating that files

**ACCESS  
RECORDS**

related to criminal cases on which it worked did not exist. In each case, the newspaper was able to obtain the records from other sources, according to *The Ledger (Lakeland)*.

When *The Ledger* made its request to LPD for records related to Reginald “Snooky” Enzor, a 35-year-old man serving a life sentence for killing his

wife, the newspaper had the copies of the records in hand. But Tom Trulson, the police department’s public records response coordinator, said he was unable to find any case dealing with Enzor in 2010, *The Ledger* reported.

In another instance, LPD could not find files related to Bernardo Copeland, who was a suspect in a battery case involving a shooting two months before he was accused in another, *The Ledger* reported. A review of the case file showed “significant gaps in the department’s response” to the battery case against Copeland, according to the newspaper.

In both cases, the individuals were not arrested quickly and were later accused of more serious crimes.

The State Attorney’s Office provided the records in each case requested by *The Ledger* when LPD could not, according to *The Ledger*.

“To me it shows that they aren’t necessarily withholding records, but are unable to produce records they should clearly have,” Assistant State Attorney Brian Haas of the Bartow State Attorney’s Office told the paper.

Cap. John Thomason of LPD told *The Ledger* in an email that although LPD is able to search and find thousands of cases and information on these cases each year, LPD’s computer search system is being replaced with a “state-of-the-art records and communication system,” according to the paper.

Source: *The Ledger (Lakeland)*

## Judge defers ruling on Fox News confidential sources

COLORADO – A Colorado district judge refused to rule on whether a *Fox News* reporter must release the names of her confidential sources, stating the issue was not “ripe” for a decision.

In his order, Colorado District Judge Carlos Samour Jr. also stated he will not rule on requiring Jana Winter’s testimony until he decides whether a notebook mailed by James Holmes, accused of murdering 12 people and injuring 58 others in the shooting rampage in Aurora, Colo., is admissible evidence in his murder trial, according to *Foxnews.com*.

Winter broke an exclusive story on *Foxnews.com* in which she revealed one

of her sources told her that prior to the shooting, Holmes sent a notebook to a University of Colorado psychiatrist. At the time Winter’s story went to press, the notebook was considered sealed evidence, according to *Foxnews.com*.

Colorado shield law offers qualified protection for journalists’ sources if the information sought is integral to the case and is not available from another source, and if the need for that information outweighs the First Amendment interests of the reporter and the public.

“Careful application of all the elements

of the Colorado Press Shield Law will ensure that journalists maintain the independence they need from the judicial process to report the news,” said Reporters Committee for Freedom of the Press Executive Director Bruce D. Brown

in an affidavit submitted to the court. “A court order compelling Ms. Winter to divulge her confidential sources would frustrate the ability of reporters across the state to gather the information necessary to keep the public informed about the criminal justice system.”

Sources: *Foxnews.com*, RCFP.org

**COURTS**

## Activist sues over access to gay marriage study

ORLANDO – LGBT activist, writer and blogger John Becker filed a public records lawsuit against the University of Central Florida (UCF) Board of Trustees and President Dr. John C. Hitt.

The lawsuit seeks a copy of research by Mark Regnerus, a University of Texas professor, cited in briefs and at oral arguments before the U.S. Supreme Court, suggesting gay marriage could have negative effects on children. It alleges that UCF should be forced to turn over records relating to the research paper

because many of the records are housed on UCF servers and UCF “resources and materials” were used to review and select the paper for publication. Becker filed suit after the university denied his public records request relating to the publication of the research, according to *Knightnews.com*, an independent student news outlet at UCF.

“My interest in filing this Sunshine Law request is to discover the truth about the peer review and publishing of the Regnerus paper, which is unknown at this

point,” Becker told *Knightnews.com*.

“Our policy is to comply with Florida’s important open records laws,” said Grant Heston, UCF Associate Vice President of Communications & Public Affairs, according to the paper. “In this instance, these emails are not related to university business and therefore are not public documents subject to disclosure. At this time, UCF has not been served with a lawsuit.”

Sources: *Knightnews.com*, *Becker v. UCF Board of Trustees*

## Brothers file lawsuits in Palm Beach County

PALM BEACH COUNTY – Joel and Robert Chandler, brothers who pursue open government and operate an open government blog called fogwatch.com, filed four lawsuits in Palm Beach County, alleging violations of the state’s Public Records Law.

In one of the lawsuits, Joel Chandler said he visited the headquarters of PalmTran, a company providing public

transportation in Palm Beach County, and asked to see the visitor log but was told he would have to file a public records request downtown, according to *The Palm Beach Post*.

In another, Joel Chandler said he requested the police duty roster for the city of Atlantis and was told by a detective that he would have to come back the next day, *The Post* reported.

The Chandlers say that “Florida Sunshine law assures immediate access to most public records and doesn’t require people to identify themselves or complete a form beforehand,” according to *The Post*.

The Chandlers have already filed similar lawsuits against Boynton Beach, the Palm Beach Sheriff’s Office and Greenacres, according to the paper.

Source: *The Palm Beach Post*

## Judge grants injunction against Sarasota task force

SARASOTA – A judge granted a temporary injunction in response to a complaint filed by the government-watchdog organization, Citizens for Sunshine.

The organization filed the complaint, claiming the task force

meetings on homelessness in Sarasota are subject to Florida’s Open Meetings Law because they include appointed public officials, meet regularly and make recommendations to local governments, according to the *Sarasota Herald-Tribune*.

Following the injunction, the group

cancelled its sixth meeting and stopped “any action or recommendation” of the task force, “including the expenditure of any public funds that occurred as a result of any prior meeting” that was not properly noticed, the *Herald-Tribune* reported.

Source: *Sarasota Herald-Tribune*

ACCESS MEETINGS

— THE —  
**BRECHNER**  
REPORT

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## AP wins copyright lawsuit against news clipping service

NEW YORK – A federal judge ruled that an Internet news clipping service violated *The Associated Press’* copyright when it redistributed *The AP’s* news stories.

U.S. District Judge Denise Cote rejected defendant Meltwater News Service’s claim that its use of stories drawn from a scan of 162,000 news websites was a fair use of copyright-protected material.

“Through its use of AP content and refusal to pay a licensing fee, Meltwater has obtained an unfair commercial advantage in the marketplace and directly

harmed the creator of expressive content protected by the Copyright Act,” Cote wrote in her opinion.

Though Meltwater performs an important function for its clients in monitoring how they are covered in the press, that “does not outweigh the strong public interest in the enforcement of the copyright laws or justify allowing Meltwater to free ride on the costly news gathering and coverage work performed by other organizations,” according to the order.

Source: *The Associated Press*

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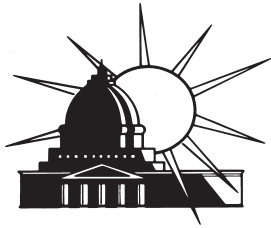


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FLORIDA

## A Global Freedom of Information Request

The pitch to my editors was simple: Can we file a Freedom of Information request in every country that has a law or constitutional provisions promising government transparency?

They went for it.

A quick count found 105 countries that fit the bill, mostly introduced in the past five or six years. Transparency is now being tied to foreign aid, and there are strong grassroots movements, boosted by WikiLeaks revelations, pressing for it as well. By the end of 2010, governments had made access to information a legal right to 85 percent of people in the world. The execution was not going to be so simple. This would be the first worldwide test of FOI. Nonetheless, *The Associated Press* was a strong advocate for freedom of information, and its reporters in the U.S. routinely use right-to-know laws. With professional journalists all around the world, we were perfectly positioned to pull this off.

### The Back Page

By Martha Mendoza

heavy lifting. We had no clue how much work this was going to be, hundreds upon hundreds of FOI requests in at least a dozen different languages, predawn conferences, country-by-country reports, reporting from remote Turkey to bustling Chinese cities.

The question to query came to us quickly. The 9-11 anniversary was approaching. Why not take a first-ever look at the impact of the global war on terror? Until now, no one had tracked how many people had been arrested and how many had been convicted as terrorists in the past decade, when almost every country had adopted terrorism legislation. We framed our questions, consulting with FOI experts and researchers who had written extensively on government transparency. Our greatest asset was *AP*'s own FOI lawyer Karen Kaiser, with whom we narrowed down exactly what to ask for, troubleshooting for possible pitfalls that could result in rejections or stonewalling.

We settled on six questions aimed at finding out how many people had been arrested, and how many convicted, on anti-terror charges in the past ten years. Who were these people, and what were their alleged acts of terror, we asked. What happened to them?



Martha Mendoza

During the last week of January 2011, *AP* reporters around the world requested answers to the same six questions in 105 countries and the European Union. We hand delivered letters in Liberia, logged into a website in Mexico, picked up the phone in Portugal, and sent a certified letter to Japan.

With our FOI requests filed, we began looking for people behind the numbers. But the data from the FOI responses was arriving in more like a trickle. Surprisingly, the quickest and most responsive

governments tended to be smaller, less developed countries like Guatemala and Georgia.

On Sept. 4, 2011, we published the first part of a two part series, *Convicted for Terror*. After the horror of Sept. 11, 2001, more than 170 countries passed or revised anti-terror laws, at the urging and often with the funding of the U.S. and the United Nations. Now, in the first tally of global terror prosecutions, *The AP* found at least 35,000 people have been convicted and almost 120,000 had been arrested as terrorists over the past decade. And while some bombed hotels or blew up buses, others were thrown into jail for waving a sign or blogging about a protest.

Two months later we published *Access Denied*, in which we reported that more than 5.3 billion people in more than 100 countries now have the right – on paper – to know what their government is doing behind closed doors. However, in the first worldwide test of freedom of information, *The AP* found that more than half the countries with freedom of information laws do not follow them.

The projects ran on dozens of front pages, and each showcased in Yahoo News' top stories for more than a day and reaching the top ten of the most popular stories for hours. We had thousands of responses to the stories online. In response to our efforts, the British House of Commons Library made an urgent request for the entire terrorism package, saying *AP*'s decision to post all its data "has been very helpful." The State Department and the U.N. also requested all of the material.

*The AP* is humbled and grateful this work was recognized by University of Florida's Brechner Center for Freedom of Information.

*Martha Mendoza is a writer for The Associated Press and the winner of the 27th Annual Brechner FOI award.*