
THE BRECHNER REPORT

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Mayor's office employees charged with violations

PENSACOLA – Two employees in the Pensacola mayor's office have been charged with non-criminal violations of the Public Records Law.

Bill Reynolds, the top official in Mayor Ashton Hayward's office and Derek Cosson, Hayward's press secretary, were charged after failing to adequately respond to a public records request, according to a report released by State Attorney Bill Eddins' office, the *Pensacola News Journal* reported.

The report said that a month-long investigation found that there were

"systematic inadequacies in how City Hall has treated public-records requests under Hayward's tenure," according to the *News Journal*.

The report also said reforms were necessary and made recommendations to improve the city's public records responses, the *News Journal* reported.

The charges stem from a request from former city Councilwoman Diane Mack in June 2012 to see new logos created as part of a rebranding campaign for the city by its former marketing firm, but had not yet been revealed, according to

the *News Journal*.

Although the report stated "numerous other City employees had received or sent images of the various new logos," neither Reynolds nor Cosson sent them to Mack, the paper reported.

Hayward said he was "extremely disappointed" with the report's findings, and that the city is in the process of rewriting its public records policy, has purchased new software that will help track and expedite requests, and will provide employee training on the Public Records Law, according to the *News Journal*.

Source: *Pensacola News Journal*

ACCESS
RECORDS

Transit authority sued over public records request

SUWANNEE COUNTY – A judge ordered the Suwannee Valley Transit Authority (SVTA) to release records in response to a lawsuit filed by Stewart Lilker, publisher of the Lake City-based Columbia County Observer, for failing to respond to a January records request.

Gwendolyn Pra, administrator and custodian of records for SVTA, said the organization follows Florida's Public Records Law, but that she failed to respond to the request via email

because she had several in-person and phone conversations with Lilker about the request and that some of his requests were confusing, according to the *Suwannee Democrat*.

She noted she did not have some of the documents Lilker had requested, but that she invited Lilker down to the office several times to view the records before the lawsuit was filed, the *Democrat* reported.

Both Pra and Bill Steele, director of operations for SVTA, notified Lilker

that there would be a fee for obtaining the records.

Third Judicial Circuit Judge David Fina said it would have been very easy for the agency to provide the documents, estimating the documents would have cost \$6.75, according to the newspaper, but that he did not believe the transit authority intentionally withheld the documents and did not order SVTA to pay the court costs.

Source: *Suwannee Democrat*

FAF, resident say shade meetings violated law

TALLAHASSEE – The Florida First Amendment Foundation (FAF) has joined a lawsuit against the St. Pete Beach City Commission, alleging commission members violated the state's Sunshine Law when it held private meetings.

The lawsuit, first filed by resident Jim Anderson in 2011 over the city's handling of its development rules, claimed the commission violated the state's Government-in-the-Sunshine law when it used a major exception to the Open Meetings Law to discuss

public business in a closed meeting, according to the *Tampa Bay Times*.

The exception allows for closed door or "shade" meetings for discussions on litigation settlement negotiations or strategy sessions regarding litigation expenses, the *Times* reported. Anderson argued the St. Pete Beach city commission discussed matters outside those permitted areas during the shade meetings.

In April 2012, Judge David Demers

of the 6th Judicial Circuit Court ruled the city had not committed such a violation and, even if it did, those actions were "cured" by subsequent actions taken by

the commission, according to the *Times*.

FAF attorney John Kaney Jr. said that some of the actions taken by the commission are "uncurable," according to the paper.

The case has been appealed to the 2nd District Court of Appeal in Lakeland.

Source: *Tampa Bay Times*

ACCESS
MEETINGS

SAO says chamber must operate in the Sunshine

ESCAMBIA COUNTY – In response to a letter sent to the Greater Pensacola Chamber by State Attorney Bill Eddins, chamber members voted to begin complying with the Florida Sunshine Law.

In the letter, Eddins told the chamber that all chamber meetings, with few exceptions, are subject to the Sunshine Law, a requirement that largely conflicts with its long-standing policy to conduct much of its business in private, according to the *Pensacola News Journal*.

“This law was enacted so that the general public would know how governmental decisions are made and how their public money is spent,” Eddins said in the letter to outgoing Chamber President and CEO Jim Hizer, the *News Journal* reported.

News Journal staff raised questions regarding the chamber’s compliance with the state’s Open Meetings Law in the wake of a search for reasons the board decided not to renew Hizer’s three-year contract ending in August.

The *News Journal* also found the board’s later decision to offer him a three-month severance package had been approved in private, the newspaper reported. Minutes requested by the newspaper of the private meetings at which these topics were discussed were not released, according to the *News Journal*.

News Journal Executive Editor Richard A. Schneider told the full chamber board that since it receives substantial sums of public money to conduct its tourism and economic development on behalf of the local

government, the law requires all board and committee business to be open to the public. The chamber’s policy has been only to invite the public for meetings in which tourism and development is discussed, for which the board receives \$5.7 million, according to the *News Journal*. All other business, including economic development, for which it receives \$232,000 from the City of Pensacola and \$550,000 from Escambia County, has generally been discussed behind closed doors, the paper reported.

Chamber chairman Sandy Sansing told the *News Journal* the chamber is ready to comply with Sunshine Law, and that chamber staff will undergo training with the agency’s legal team immediately.

Source: *Pensacola News Journal*

New rule prohibits devices during court proceedings

TALLAHASSEE – A new rule approved by the Florida Supreme Court prohibits jurors from taking their smartphones and other electronic devices into deliberations.

The rule prevents jurors from using their smartphones or other devices to transmit or access data, including taking photos or videos of the proceedings, transmitting or texting

details about the case or looking up information about the case from the time trial begins until the jurors are discharged, *The Associated Press* reported.

COURTS

The rule also gives judges discretion to remove phones and other devices from jurors once they have been impaneled, according to *The AP*.

The Florida Bar’s Rules of Judicial Administration Committee proposed the new rule in response to the court’s requests that the committee address the use of electronic devices by jurors and individuals other than the media in the courtroom, according to the court’s opinion.

Sources: *The Associated Press, Amendments to the Florida Rules of Judicial Administration Rule 2.451*

Floridians’ private health information leaked

TALLAHASSEE – The Florida Department of Health (DOH) is taking steps to increase privacy and accountability of its prescription drug database, following the leak of the private health information of 3,000 Floridians.

The DOH is working with law enforcement and the Florida Attorney General’s Office to develop additional safeguards, including placing limits on who has access to the database and banning access to anyone who leaks information, according to a press release from the DOH.

Public records requests submitted by the American Civil Liberties Union (ACLU) of Florida to the DOH and the Seminole County Sheriff’s Office showed that private health information stored in a database was distributed

to Volusia County criminal attorneys despite the fact that only six of the individuals were subjects of a criminal investigation, ACLU.org reported.

Although the program is subject to federal and state privacy laws and regulations, the confidential prescription drug records, including the individual’s

name, date of birth, address, drug prescription, dosage amount as well as the name of the pharmacy that dispenses the prescription were released without consent or notification to any of the individuals, according to ACLU.org.

“We’re calling on the Department of Health and Human Services to help uncover how this breach of privacy from what was supposed to be a

secure database could have happened and whether laws were broken in the process,” according to a statement by Maria Kayanan, associate legal director of the ACLU of Florida.

The Electronic Online Reporting of Controlled Substances Evaluation (E-FORCSE) was established in 2009, but the Florida

Legislature refused to pay for it, delaying the launch until 2011, according to *Tampabay.com*.

The ACLU of Florida also presented recommendations to the DOH that included requiring law enforcement agencies and officers to obtain a warrant to access E-FORCSE, according to the ACLU.

Sources: *Florida Department of Health, ACLU.org, Tampabay.com*

PRIVACY

Judge to review “textgate” messages

ORLANDO – An Orlando judge will review cell phone bills and text messages at the center of a controversy dubbed “textgate” to determine whether certain public officials’ messages should be made public record, according to the *Orlando Sentinel*.

Citizens for a Greater Orange County sued Orange County in October, claiming officials violated open government laws by exchanging text messages with lobbyists during a public hearing at which commissioners overturned a sick-time measure, the *Sentinel* reported.

Circuit Judge Robert J. Egan agreed to review cell phone bills and text messages to see if officials had withheld any public records. Records released revealed that an undetermined number of text messages on and around that day were lost or deleted, according to the *Sentinel*. Though some messages have been recovered, others are still missing, the *Sentinel* reported.

Florida’s Public Records Law makes it a first-degree misdemeanor for an official to intentionally destroy public records. The criminal investigation, launched by the Florida Department of Law Enforcement is still ongoing, according to the paper.

Source: *Orlando Sentinel*

City wants T-U lawsuit dismissed

JACKSONVILLE – Attorneys for the city of Jacksonville threatened to pursue attorney’s fees and court costs if a lawsuit filed against them alleging violation of the Sunshine Law is not dropped, according to *The Florida Times-Union*.

Florida Times-Union editor Frank Denton filed the lawsuit in Duval County Circuit Court after Mayor Alvin Brown and some of his top officials negotiated a pension reform deal with city police officers and firefighters in response to a federal lawsuit. Brown claimed the deal would save the city \$1.2 billion over 30 years, *The Times-Union* reported.

The newspaper claims the collective bargaining agreement that received the

approval of a federal mediator, violated the Sunshine Law because it was reached behind closed doors and should be thrown out, according to the lawsuit.

The deal would have to be approved by the city council, which voted to hire its own independent council to review the settlement agreement, *The Times-Union* reported. Attorneys for Jacksonville and the mayor filed a motion to dismiss *The Times-Union*’s lawsuit, according to the paper. Brown also asked a community panel to examine the deal, which could recommend anything from scrapping the deal to a full endorsement.

Sources: *The Florida Times-Union*, *Frank Denton v. Mayor Alvin Brown*

Media criticize records seizure

WASHINGTON, D.C. – In response to mounting criticism regarding the seizure of reporters’ records, President Barack Obama said his administration would conduct a review of its guidelines governing investigations that involve reporters, according to *Fox News*.

The U.S. Department of Justice (DOJ) secretly obtained the phone records of *The Associated Press* editors and journalists over a two-month period – from April and May 2012 – in a practice that has been criticized

by the news organization as going beyond anything that could be justified by any specific investigation.

News organizations are normally notified in advance of a government subpoena for records, but providing prior notice can be waived when, as in this case, the government cites an exemption that such notice would “pose a substantial threat to the integrity of the investigation,” according to *The New York Times*.

The records obtained, presumably from phone companies earlier this year, listed incoming and outgoing calls and the duration of each call for more than 20 separate telephone lines, as well as the work and personal phone numbers of individual reporters, according to *The AP*.

In a separate investigation in 2010 and 2011, DOJ officials used a subpoena to obtain the phone records of *Fox News* reporter James Rosen, after one of his stories in 2010 included details about

a secret United States report on North Korea, according to *The Times*.

Details of the DOJ’s investigation into Rosen’s newsgathering practices became public only after news broke of *The AP* phone records probe, *The Times* reported.

A court affidavit showed the DOJ also obtained a secret search warrant from a federal judge to gain access to Rosen’s email records, describing him as a “co-conspirator” in the leak investigation, according to the Reporters Committee for

NEWSGATHERING

Freedom of the Press. The DOJ

used security badge access records to track his time in the State Department building, *The Washington Post* reported.

In a letter to U.S. Attorney General Eric Holder, more than 50 news organizations called on the DOJ to mitigate the damage caused by the wide probe of *The AP* phone records and to return the secretly subpoenaed records, according to the RCFP.

“In the 30 years since the Department issued guidelines governing its subpoena practice as it relates to phone records from journalists, none of us can remember an instance where such an overreaching dragnet for newsgathering materials was deployed by the Department, particularly without notice to the affected reporters or an opportunity to seek judicial review,” the media organizations told Holder.

Sources: *Fox News*, *The Associated Press*, *The New York Times*, *The Washington Post*, *Reporters Committee for Freedom of the Press*

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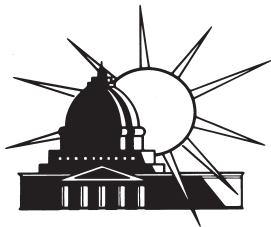
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Chamber's step into the Sunshine is not so scary

Don't fear the light.

As the Greater Pensacola Chamber of Commerce steps into compliance with the law and opens all of its taxpayer-funded business to the taxpaying public, some members seem nervous.

The move comes following protests by the *Pensacola News Journal* over the chamber's longstanding policy of closing executive committee meetings of the board to the public.

State Attorney Bill Eddins' recent letter stated that all chamber meetings, with few exceptions, are subject to the Sunshine Law because the chamber accepts nearly \$600,000 a year from Escambia County and the City of Pensacola, as the *News Journal* reported recently.

The tax dollars are used to carry out the "public function" of fostering economic development for the city and county, placing the board in the sunshine, Eddins wrote.

Still some members worry the sunshine will complicate the business of job recruitment, retention and development.

There is no doubt that things will be different.

Gone are the days when a "businessman's lunch" can legitimately be called to discuss incentives to offer to a prospective new business or to discuss whose contract should or should not be renewed.

Change is scary, but it will be OK.

Everyone knows that the air in a house that is shut up tight gets stale. Dust accumulates. Nothing grows there but the cobwebs.

Letting the sunshine in is a good thing.

In the open, we learn that the Saltmarsh, Cleaveland & Gund audit finds less than 1 percent - some \$4,000 of the \$518,500 the chamber received from Escambia County - of the BP gift card promotion was unaccounted for.



*Shannon
Nickinson*

That further accounting may come from information American Express has refused to provide.

The chamber now ought to sue AMEX for the details of where the cards were used and who used them.

In the open, we will have to field requests for information from people who don't agree with hiring one vendor or another.

This will make meetings take longer. Meticulous notes will have to be kept.

Information requests from people chamber members may find annoying, tedious or unpleasant will have to be fulfilled.

That's the reality people working in government and industries like the media have had to deal with for decades. Welcome to the party, pals.

Some chamber folks will no doubt be thinking that more openness opens them up to more snarky comments from the public, more barbs from the blogosphere, more criticism from all quarters.

Probably so.

But it gives you a better defense from charges of cronyism, favoritism and good-old-boyism than you've ever had.

Want to know how we arrived at that decision? Come on down to the meetings in person to see!

Watch the video feed online if you can't get there in person, or read the transcribed minutes if you are old school!

In the sunshine, we can all see who says what to whom, and that's not too scary.

Is it?

Shannon Nickinson is a columnist for the Pensacola News Journal. She has been a writer and editor at the Pensacola newspaper since August of 1999.