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# THE BRECHNER REPORT

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## ACLU cellphone monitoring lawsuit dismissed

SARASOTA – A circuit judge dismissed a lawsuit filed against the City of Sarasota and the Sarasota Police Department regarding cellphone monitoring data, according to the Sarasota Herald Tribune.

The American Civil Liberties Union sought records from the Sarasota Police Department about their use of stingray devices, which allow law enforcement officials to track cellphone locations and signals, the paper reported.

Circuit Judge Charles Williams ruled

the records were not subject to Florida's Sunshine Law because the law does not apply to federal entities, according to the court order.

The federal government informed the court that Sarasota Police Detective Michael Jackson is a sworn deputy of the U.S. Marshals Service, according to the order.

Williams also ruled that applications approving the use of stingray devices will be filed with the court under seal.

Michael Barfield, vice president of

the ACLU of Florida, told the paper that the ACLU will ask to have the records unsealed. The ACLU is still determining whether to appeal the decision, the paper reported.

"We still want to know to what extent the police have been spying on citizens," Barfield said.

*Source: Sarasota Herald Tribune, American Civil Liberties Union of Florida, Inc., and Michael Barfield v. City of Sarasota and Michael Jackson, Order Dismissing Writ of Mandamus, Denying Motion for Temporary Injunction, No. 2014-CA-003248 NC*

**ACCESS  
RECORDS**

## Judge rules blind trust law constitutional

TALLAHASSEE – A judge upheld a law that allows public officials to use blind trusts, according to The Associated Press.

Circuit Judge John Cooper ruled recently that the use of blind trusts did not violate the Florida Constitution's 1976 amendment requiring public officials to disclose their finances, the AP reported.

Cooper reasoned that blind trusts allow the public and public officials to have the same information on an official's financial holdings, "thus permitting an informed opinion on whether conflicts of interests have or may in the future occur," according to the opinion.

Cooper concluded that "the primary goal of the amendment is to impose disclosure of information, previously known only to the public official, so that the public will possess the same information that the public official or candidate has."

Jim Apthorp, former Florida Gov. Reubin Askew's chief of staff, filed the lawsuit, according to The Miami Herald.

The blind trust law, approved in 2013, allows public officials to place their assets in the hands of a trustee who makes investment decisions without the official's

knowledge, the paper reported. The law was recommended by a statewide grand jury investigating public corruption.

Gov. Rick Scott is the only official to date that has taken advantage of the blind trust law, according to the paper.

Apthorp told the AP that he would consult with his attorneys on a potential appeal of the ruling.

*Source: The Associated Press, The Miami Herald, Apthorp v. Detzner, Final Order Finding Florida Statute §112.1425 Constitutional, Case No. 2014-CA-1321*

**OPEN  
GOVERNMENT**

## Port asks group to dismiss public records suit

JACKSONVILLE – The Jacksonville Port Authority asked an environmental group, in a letter, to dismiss a public records lawsuit, according to The Florida Times-Union.

The Environmental Legal Institute of Florida filed the lawsuit after JaxPort and one of its consultants failed to

release important information on a study about dredging the St. Johns River, the paper reported.

The institute made a public records request for the information to both JaxPort and its consultant Martin Associates, according to the paper. Martin Associates claimed that the information was exempt from disclosure and has no record of the institute's original request.

JaxPort claimed it responded to the institute's request in good faith and does not have any of the economic information or data used in the reports the

institute requested, the paper reported.

A hearing has not been scheduled for the case and the institute said it plans to continue with the suit, according to the paper.

JaxPort wants to deepen the St. John's River to accommodate larger ships, the paper reported. The Environmental Legal Institute requested the information from JaxPort to determine whether supporters of the project are overestimating the economic benefits and the potential effects on the environment.

*Source: The Florida Times-Union*

**ACCESS  
RECORDS**

## Company sues to block records

TALLAHASSEE – A transportation company filed a lawsuit to block the release of its federal loan application and other information requested by a developer, according to The Palm Beach Post.

Orlando developer Matthew Falconer made a public records request to All Aboard Florida, a company seeking to develop a passenger rail service between Miami and Orlando, for information on the company's loan application, economic statements and rider surveys, the paper reported.

All Aboard Florida claimed the information Falconer sought included

trade secrets, which are exempt from disclosure under Florida's Public Records Law, according to All Aboard Florida's complaint.

The state of Florida, the Department of Transportation, and the Greater Orlando Aviation Authority planned to release the trade secrets unless All Aboard Florida obtains an injunction prohibiting the disclosure, according to the complaint.

*Source: The Palm Beach Post, All Aboard Florida v. State of Florida, Complaint for Declaratory Judgment and Injunctive Relief*

## City to begin enforcing fees for certain public records

FERNANDINA BEACH – The city of Fernandina Beach will begin charging for some public records, according to the Fernandina Beach News-Leader.

The city will charge a fee for public records requests that take more than an hour to complete, the paper reported. The city policy mandates that any request that takes more than an hour will be charged at an hourly rate equal to the lowest-paid staff member in the department where the information is being requested.

City Clerk Caroline Best said the city is enforcing the policy because Vice Mayor Sarah Pelican noticed that city staff was not charging for records requests, according to the paper.

Best told the paper that some cities charge fees for requests that take longer than 15 minutes, the paper reported. Best said charging similar fees would be "cumbersome" and "flies in the face of what government in the Sunshine is all about."

Enforcement of the fee policy is a way to remind city staff to properly bill their time, Best told the paper.

*Source: Fernandina Beach News-Leader*

## Town settles public records suit

CUTLER BAY – The Cutler Bay Town Council approved a settlement in a lawsuit filed by Citizens Awareness Foundation Inc. alleging that the town violated Florida's Public Records Law, according to The Miami Herald.

CAFI sued Cutler Bay after the town required CAFI's executive director, Joel Chandler, to disclose personal information in exchange for his public records request, the paper reported.

Chandler requested a record of the town's most recent transaction with the Florida League of Cities, according to the paper. Chandler said the clerk's office required him to use a form and supply his personal information because it was a town policy.

The town agreed to settle the suit

for \$2,250 in attorney's fees, the paper reported. Cutler Bay also agreed to display a copy of Florida's Government in the Sunshine manual in the Town Hall lobby for one year.

Cutler Bay Mayor Ed MacDougall said he believes CAFI may have had other motives in filing the lawsuit and has sued several other cities, making similar allegations, according to the paper.

Chandler said his organization has not made any money from these lawsuits, the paper reported.

"We want them to fix the problem," Chandler said. "We're not looking for opportunities to sue people. We are looking for people to start doing the right thing."

*Source: The Miami Herald*

## Florida Supreme Court to hear fees case

TALLAHASSEE – The Florida Supreme Court will hear a case regarding attorney's fees in the Jacksonville Police and Fire pension fund lawsuit, according to The Florida Times-Union.

Curtis Lee sued the city and the pension fund in 2009 when he was charged to view public records, the paper reported. The trial court found that the

pension fund violated Florida's Public Records Law, but Lee was denied attorney's fees because the fund did not knowingly violate the law.

Both parties appealed the ruling to the 1st District Court of Appeal, according to the paper. The appellate judge ruled in favor of Lee and ordered the lower court to determine appropriate attorney's fees.

Ultimately, the lower court ruled Lee was entitled to approximately \$75,000 for costs incurred during the original case, but not on appeal, the paper reported.

"That was my only remedy if someone refused to give me public records. Without that [the ability to sue] I am powerless," Lee said.

The city has incurred about \$300,000 in legal fees for this case, according to the paper.

*Source: The Florida Times-Union*

OPEN  
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# THE BRECHNER CENTER

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## 2014 LEGISLATIVE REVIEW

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TALLAHASSEE – The following is a summary of bills pertaining to public records and open meetings introduced during the 2014 legislative session. Chief sponsors of the bills are indicated in italics.

Copies of the legislation in full are available at the Florida Legislature's website ([www.leg.state.fl.us](http://www.leg.state.fl.us)).

SB=Senate Bill; HB=House Bill; CS=Committee Substitute

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*The following 22 bills create new exemptions to the state Public Records and Open Meetings law.*

**CS/HB 115 University Direct Support Organizations:** Creates an exemption for portions of meetings of a university direct support organization when the board discusses research funding proposals or support programs. *Rep. Cary Pigman (R-Sebring)* Approved by Gov. Scott May 12, 2014.

**CS/HB 177 Prepaid Wireless E911 Fee:** Exempts all information from providers of prepaid wireless E911 services in returns, reports, accounts or declarations received by the Department of Revenue. *Rep. Greg Steube (R-Sarasota)* Approved by Gov. Scott June 20, 2014.

**CS/SB 226 Automated License Plate Recognition Systems:** Creates an exemption for personal identifying information obtained through the use of automated license plate recognition systems and the images obtained through the use of such systems. Allows disclosure of the information to a criminal justice agency under certain circumstances and to the person whom the vehicle is registered unless it is a part of an ongoing criminal investigation. *Sen. Jeff Brandes (R-St. Petersburg)* Approved by Gov. Scott June 20, 2014.

**CS/SB 238 Public Defenders – Names of Spouses:** Expands the current

exemption of home addresses of public defenders to include the names of their spouses and children. *Sen. Arthenia Joyner (D-Tampa)* Approved by Gov. Scott June 20, 2014.

**CS/SB 256 Forensic Behavioral Health Evaluations:** Creates an exemption for forensic behavioral health evaluations filed with a court. *Sen. Rene Garcia (R-Hialeah)* Approved by Gov. Scott June 13, 2014.

**CS/SB 280 Treatment-Based Drug Court Programs:** Creates an exemption for information relating to participants in treatment-based drug court programs and to persons being considered for treatment. *Sen. Rene Garcia (R-Hialeah)* Approved by Gov. Scott June 20, 2014.

**CS/SB 366 Trade Secrets – Computers:** Expands the current exemption for trade secrets relating to computers, systems and networks held by an agency to also exempt trade secrets relating to electronic devices. *Sen. Jeff Brandes (R-St. Petersburg)* Approved by Gov. Scott June 20, 2014.

**CS/SB 390 Department of Health – Home Addresses:** Creates an exemption for the home addresses, telephone numbers, dates of birth and photographs of current or former Department of Health employees whose duties include investigation or prosecution of complaints filed against healthcare practitioners, the inspection of licensed facilities, or the determination or adjudication of eligibility for social security benefits. The exemption also applies to the spouses and children of the employees and includes the names and locations of schools and day care facilities the children attend. *Sen. Alan Hays (R-Umatilla)* Approved by Gov. Scott June 13, 2014.

**CS/HB 415 Investigations – Office of Financial Regulations:** Creates an

exemption for records related to the examination or investigation of financial institutions without notice until the examination is complete or inactive. Certain information like personal identifying information of consumers will remain exempt even after the examination is complete or inactive. *Rep. Dave Santiago (R-Deltona)* Approved by Gov. Scott June 13, 2014.

**SB 520 Dental Workforce Surveys:** Creates an exemption for all personal identifying information contained in workforce surveys held by the Department of Health completed by dentists and dental hygienists. *Sen. Garrett Richter (R-Naples)* Approved by Gov. Scott June 13, 2014.

**CS/HB 525 Personal Identifying Information – Concealed Weapons Permits:** Creates an exemption for personal identifying information for those who have applied for a concealed weapons permit held by a tax collector. *Rep. J.W. Grant (R-Tampa)* Approved by Gov. Scott June 20, 2014.

**CS/HB 711 Alzheimer's Disease Research Grant Advisory Board:** Creates an exemption for applications provided to the Alzheimer's Disease Research Grant Advisory Board within the Department of Health for Alzheimer's research grants and all records generated by the board while reviewing such applications. Also creates an exemption for those portions of board meetings during which the applications are discussed, requiring that closed meetings be recorded and that the recording is subject to the same exemptions mentioned above. The board's final recommendations will be subject to disclosure. *Rep. Matt Hudson (R-Naples)* Approved by Gov. Scott June 18, 2014.

**CS/HB 775 Propriety Confidential Business Information – State Boxing Commission:** Creates an exemption for "proprietary confidential business



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information” held by the Florida State Boxing Commission that is treated by a boxing promoter as private in that disclosure would harm the promoter’s business information. This information includes the number of ticket sales for a match, the amount of gross receipts after a match, trade secrets, business plans, internal auditing controls and reports of internal auditors, and reports of external auditors. *Rep. Travis Hutson (R-Palm Coast)* Approved by Gov. Scott June 13, 2014.

**CS/HB 993 Animal Researchers – Personal Identifying Information:** Creates an exemption for personal identifying information of those persons employed by, under contract with, or volunteering for a public research facility, including a state university, that conducts animal research or are engaged in activities related to animal research. The exemption includes animal records, animal care and treatment records, research protocols and approvals, purchase and billing records related to animal research or activities, animal care and use committee records and facility and laboratory records related to animal research or activities. *Rep. Travis Cummings (R-Orange Park)* Approved by Gov. Scott May 12, 2014.

**CS/SB 1140 Emergency Planning:** Creates an exemption for information furnished by a person or business to the Division of Emergency Management for emergency planning purposes. *Sen. Alan Hayes (R-Umatilla)* Approved by Gov. Scott June 20, 2014.

**SB 1262 Insurance Flood Loss Model:** Expands the exemption for trade secrets used in designing and constructing a hurricane flood loss model to include trade secrets related to flood loss models. Also exempts meetings at which such trade secrets are discussed. *Sen. Jeff Brandes (R-St. Petersburg)* Approved by Gov. Scott June 13, 2014.

**CS/SB 1278 Examinations – Office of Financial Regulation:** Creates an exemption for informal enforcement actions by the Office of Financial Regulation until the action is completed or inactive. Some information that would impair the safety and soundness of the financial institution will remain exempt. Also creates an exemption for trade secrets held by the Office of Financial Regulation.

*Sen. Garrett Richter (R-Naples)* Approved by Gov. Scott June 13, 2014.

**CS/SB 1300 Proprietary Confidential Business Information – Office of Insurance Regulation:** Creates an exemption for proprietary confidential business information held by the Office of Insurance Regulation relating to insurer solvency. Proprietary confidential business information includes trade secrets and other information owned or controlled by an insurer which is intended to be and is treated as private in that disclosure would cause harm to the insurer’s business operations and is not otherwise readily available. *Sen. David Simmons (R-Altamonte Springs)* Approved by Gov. Scott June 13, 2014.

**CS/SB 1320 Family Trust Companies – Office of Financial Regulation:** Creates an exemption for certain records relating to family trust companies held by the Office of Financial Regulation and stipulates that willful disclosure of such information is a third degree felony. The exempt information includes personal identifying information contained in records relating to registration, application or certification, examinations of family trusts and reports of such examinations. Names of shareholders or members and emergency cease and desist orders are also exempt. Allows for disclosure under certain specified conditions. *Sen. Garrett Richter (R-Naples)* Approved by Gov. Scott June 13, 2014.

**CS/SB 1526 Data Breach Notifications:** Creates an exemption for all information received by the Department of Legal Affairs pursuant to the requirement that they be notified of all breaches of data security. Also exempts records relating to investigations of such breaches held by the department or a criminal justice agency. Allows for disclosure under certain specified conditions during the investigation, but personal information, computer forensic reports, information revealing data security weaknesses, and proprietary business information is exempt even after the investigation is complete. *Sen. John Thrasher (R-St. Augustine)* Approved by Gov. Scott June 20, 2014.

**SB 1700 Personal Information – Compassionate Use Registry:** Creates an exemption for the identifying information of physicians and patients contained in the registry allowing physicians to

prescribe low-THC marijuana to certain patients. Allows for disclosure of such information under certain specified circumstances. *Sen. Aaron Bean (R-Jacksonville)* Approved by Gov. Scott June 16, 2014.

**HB 7007 Personal Identifying Information – Toll Facilities:** Expands the exemption for personal identifying information held by the Department of Transportation, a county or an expressway authority for the purpose of paying, prepaying or collecting tolls to also include cities collecting such information. *H. Transportation and Highway Safety Subcommittee* Approved by Gov. Scott June 20, 2014.

*The following seven open government bills do not create new exemptions to the state Public Records and Open Meetings law.*

**CS/HB 89 Threatened Use of Force:** Allows accused persons who acted in lawful self-defense to have criminal history records expunged when a state attorney or court dismisses the charging document. **Rep. Neil Combee, (R-Auburndale)** Approved by Gov. Scott June 20, 2014.

**CS/SB 730 Governing Bodies/ Public Meetings:** Authorizes a city government body to hold joint meetings with the governing body of the county within which the city is located or the government body of another city to discuss, receive and act upon matters of mutual interest. *Sen. Bill Galvano (R-Bradenton)* Approved by Gov. Scott May 12, 2014.

**CS/HB 846 Government Ethics:** Expands the requirement that constitutional officers and elected city officials receive annual ethics and open government training. Officials must certify completion of the requirement on his or her financial disclosure and financial statement report and failure to certify is not an immaterial error or omission. Also prohibits a member for failing to vote unless there is or appears to be a conflict of interest or another more stringent ethics standard adopted by the board or commission. If an official asserts a conflict, the member must comply with disclosure requirements or additional standards.

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*Sen. Jack Latvala (R-Clearwater)*  
Approved by Gov. Scott June 20, 2014.

## **CS/HB 863 Sworn Statements**

**– Motor Vehicle Crash Reports:** Requires a sworn statement for specific persons, including members of the media, to access motor vehicle crash reports. Requires each requestor to have a separate statement for each individual crash report. The sworn statements apply to each report requested within the 60 day time period in which identifying information of persons involved in motor vehicle crashes is exempt from public record. *Rep. Dave Kerner (D-Palm Springs)* Approved by Gov. Scott June 20, 2014.

**CS/HB 865 Personal Identifying Information – Motor Vehicle Crash Reports:** Amends the media exception to the exemption for personal identifying information contained in motor vehicle crash reports by redefining “free newspapers of general circulation.” Those newspapers that request 10 or more crash reports within a 24 hour period are prohibited from acquiring contact information of victims of car crashes for 60 days following a crash. *Rep. Dave Kerner (D-Palm Springs)* Approved by Gov. Scott June 20, 2014.

**CS/SB 1194 Citizen Support and Direct Support Organization:** Changes the reporting requirements of citizen support and direct support organizations and the agencies and institutions such organizations support. Requires citizen support and direct support organizations to annually submit the organization’s contact information, the statutory order creating that organization, a brief description of the organization’s mission and the results obtained, a brief description of the organization’s plan for the next three years, a copy of the organization’s code of ethics and most recent Form 990 to the appropriate agency. Also requires each agency receiving information to post the information on its website, including a link to the support organization’s website. All contracts between a support organization and the agency are contingent upon the submission and posting of the required information. *S. Governmental Oversight and Accountability* Approved by Gov. Scott June 13, 2014.

**HB 7073 Information Technology Governance:** Creates the Agency for State Technology with the Department of Management Services and transfers various shared resource centers to the new agency. The agency is a separate budget program and is not subject to control or direction by the Department of Management Services. The agency’s executive director will serve as the state’s chief information officer. *H. Appropriations Committee* Approved by Gov. Scott June 20, 2014.

*The following ten exemptions were re-enacted in 2014 under the Open Government Sunset Review Act (OGSR), which requires review of exemptions every five years.*

**SB 506 Florida Insurance Guaranty Association:** Reenacts, without modification, the exemption for the Florida Insurance Guaranty Association for information including claims filed until termination of all litigation or closing of claims, medical records and other information contained in claims files, and privileged attorney-client communications. *S. Banking and Insurance Committee* Approved by Gov. Scott June 13, 2014.

**SB 646 Education Records – Public Postsecondary Educational Institutions:** Reenacts, without modification, the exemption for student education records consistent with the federal Family Educational Rights and Privacy Act (FERPA) and authorizing public postsecondary educational institutions to prescribe the content and custody of public records the institution maintains on its students and applicants for admissions. *Sen. Bill Montford (D-Tallahassee)* Approved by Gov. Scott May 12, 2014.

**CS/SB 648 Education Records – Family Educational Rights and Privacy Act:** Reenacts, without modification, an exemption for K-12 records as required by the federal Family Educational Rights and Privacy Act (FERPA). *Sen. Bill Montford (D-Tallahassee)* Approved by Gov. Scott May 12, 2014.

**CS/SB 650 Estate Inventories:** Reenacts, without modification, an exemption of estate inventories and

accountings filed with a clerk of court. *S. Judiciary* Approved by Gov. Scott June 13, 2014.

**CS/SB 656 Identifying Information – Testing Misconduct Investigations:** Reenacts, without modification, an exemption for certain identifying information contained in allegations of misconduct related to the administration of tests by schools and postsecondary educational institutions until the investigations are complete or inactive. *Sen. Bill Montford (D-Tallahassee)* Approved by Gov. Scott May 12, 2014.

**CS/SB 858 Florida Defense Support Task Force:** Reenacts, without modification, exemptions for those portions of records relating to the strengths and weaknesses of state military installations of missions relative to the selection criteria under the base realignment and closure process held by the Florida Defense Support Task Force. Also reenacts a limited public meetings exemption for meetings of the Task Force at which the exempt records are discussed, and all records generated during the closed meetings are also exempt. *S. Military and Veterans Affairs* Approved by Gov. Scott June 20, 2014.

**SB 996 Scripps Florida Funding Corporation:** Repeals an existing exemption for the Scripps Florida Funding Corporation and an exemption for meetings of the corporation’s board at which confidential information is discussed. *S. Commerce and Tourism* Approved by Gov. Scott June 20, 2014.

**SB 1108 Personal Identifying Information – Dependent Children:** Reenacts, with minor technical modification, the exemption for personal identifying information of the dependent children of current or former agency employees. *S. Community Affairs* Approved by Gov. Scott June 13, 2014.

**SB 1678 Agency Personnel – Social Security Numbers:** Reenacts and modifies the exemption for agency personnel social security numbers to allow disclosure of the exempt information under certain, specified conditions. *S. Governmental Oversight and Accountability Committee* Approved by Gov. Scott June 13, 2014.

**HB 7177 Personal Identifying Information – Prescription Drug Monitoring Program:** Reenacts, without

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modification, an exemption for patient identifying information in prescription drug monitoring program records, as well as information identifying physicians and pharmacists. *H. State Affairs Committee*  
Approved by Gov. Scott June 13, 2014.

*The following bills were introduced in the 2014 session but were not passed.*

HB 7103 OGSR/Florida Defense Support Task Force  
CS/SB 318 Exemption/University Direct Support Organizations  
CS/HB 135 and SB 718 Exemption/Executive Searches – Universities and Colleges  
CS/SB 108 and HB 125 Exemption/Minor Claim Settlements  
CS/HB 111 Exemption/ Forensic Behavioral Health Evaluations  
HB 7101 OGSR/Estate Inventories  
HB 891 Exemption/Petitions for Protective Injunctions  
CS/SB 448 Exemption/Threatened Use of Force  
SB 164 Exemption/Criminal Records  
CS/HB 265, CS/SB 298 and HB 619 Dissemination of Mug Shots  
SB 370 Exemption/Child Abuse Death Review Committees  
HB 721 and HB 1196 Exemption/Work Addresses – Domestic Violence Victims  
SB 812 Exemption of Criminal Records  
CS/HB 1019 and CS/SB 1436 Exemption/Location of Safe Houses  
CS/HB 1021 and CS/SB 1426 Exemption/Human Trafficking Victims  
CS/SB 782 and CS/HB 1231 Government Data Practices  
CS/HB 1153 Citizen Support and Direct Support Organizations  
HB 1103 and SB 1270 Economic Incentive Programs  
HB 7121 OGSR/Education Records – Public Postsecondary Educational Institutions  
HB 7119 OGSR/Education Records – Family Educational Rights and Privacy Act  
HB 7115 OGSR/Identifying Information – Testing Misconduct Investigations  
SB 606 and HB 655 Governmental Ethics  
HB 7155 Government Ethics  
HB 1317 Exemption/County Ethics Complaints – Clerks of Court  
SB 1662 Exemption/Florida Elections Commission

CS/SB 1002 Exemption/Investigations – Office of Financial Regulation  
CS/HB 675 Exemption/Examinations – Office of Financial Regulation  
CS/HB 1269 Exemption/Family Trust Companies – Office of Financial Regulation  
HB 1167 and SB 1240 Exemption/Financial Statements – Competitive Solicitations  
HB 269 Exemption/Bodily Injury Liability Insurance Policies  
HB 7045 OGSR/Florida Insurance Guaranty Association  
HB 7159 Exemption/Insurance Flood Loss Model  
CS/HB 19 and CS/SB 350 Exemption/Personal Information – Yellow Dot Critical Motorist Medical Information Program  
CS/HB 599 Exemption/Automated License Plate Recognition Systems  
CS/HB 555 and SB 1476 Exemption/Automated Traffic Law Enforcement System  
CS/SB 876 Personal Identifying Information – Motor Vehicle Crash Reports  
SB 1046 Exemption/Personal Identifying Information – Motor Vehicle Crash Reports  
HB 399 and SB 516 Exemption/Individual Identifying Information – Homeless Management Information System  
CS/HB 421 and SB 538 Exemption/Email Addresses – Tax Collectors  
HB 457 Exemption/Dental Workforce Surveys  
HB 475 and CS/SB 532 Disclosure of Sexually Explicit Images  
HB 481 and SB 1356 Exemption/Dates of Birth – Registered Voters  
CS/SB 546 Exemption/Personal Identifying Information – Concealed Weapons Permits  
CS/SB 616 Exemption/Personal Identifying Information – Toll Facilities  
CS/SB 866 OGSR/Personal Identifying Information – Prescription Drug Monitoring Program  
CS/HB 1029 and CS/SB 1472 Identity Theft  
SB 1514 Exemption/Email Addresses – Registered Voters  
HB 157 Exemption/Trade Secrets – Fracturing Chemical Usage Disclosure Act  
CS/HB 643 Exemption/Trade Secrets – Computers  
CS/HB 543 and CS/SB 1396

Exemption/Unsolicited Proposals – State Universities  
HB 689 Exemption/Trade Secrets – Medical Gas Permits  
CS/SB 808 Exemption/Proprietary Confidential Business Information – State Boxing Commission  
CS/HB 1051 and CS/SB 1318 Exemption/Unsolicited Proposals  
CS/HB 1273 Exemption/Proprietary Confidential Business Information – Office of Insurance Regulation  
HB 1413 and SB 1522 Exemption/Trade Secrets – Annual Recycling Reports  
CS/HB 69 Exemption/Public Defenders – Names of Spouses  
CS/HB 419 Exemption/Department of Health – Home Addresses  
CS/SB 414 Exemption/Animal Researchers – Personal Identifying Information  
HB 7049 OGSR/Personal Identifying Information – Dependent Children  
HB 1437 Exemption/Drug Tests – Public Officers  
HB 7143 OGSR/Agency Personnel – Social Security Numbers  
CS/HB 109 Exemption/Treatment-Based Drug Court Program  
HB 57 and SB 138 Meetings of District School Boards  
CS/HB 503 Governing Bodies/Public Meetings  
SB 718 and HB 985 Notice/Public Meetings  
CS/HB 1151 Public Records and SB 1648 Public Records and Meetings  
HB 1375 and SB 1610 Federal RESTORE Act  
CS/SB 840 Exemption/Alzheimer’s Disease Research Grant Advisory Board  
HB 7047 OGSR/Scripps Florida Funding Corporation  
HB 1083 and SB 1218 Exemption/Surveillance Recordings  
HB 7011 Exemption/Emergency Planning  
SB 1338 Exemption/Data Security Incidents  
CS/HB 7087 Exemption/Data Breach Notifications  
CS/SB 198 and HB 527 Social Media Privacy  
CS/SB 292 Exemption/Prepaid Wireless E911 Fee  
SB 222 and CS/SB 928 State Technology

*Sources: Florida First Amendment Foundation, Florida Senate, Florida House of Representatives*



## Judge revisits ruling on public records fee

COLLIER COUNTY –A circuit judge changed his mind about the correct fee a county clerk of courts could charge, which partially overturned his initial ruling in a reporter’s favor.

In his final judgment, Circuit Judge Fred Hardt ruled that the fee for scanning 206 pages from the clerk’s Internal Audit manual and copying them onto a disk cannot exceed one dollar per page, according to Hardt’s final declaratory judgment. Hardt also ruled the fee for downloading emails stored onto a computer and copying them onto a disk cannot exceed the cost of the disk.

Reporter Gina Edwards sued Collier County Clerk of Court Dwight Brock after

Brock attempted to charge Edwards \$556 for putting the records on two disks. Edwards is a reporter for the online newspaper Naples City Desk.

Hardt initially ruled in favor of Edwards in March and ordered a fee of one dollar per disc, according to Naples City Desk. Brock appealed and asked for an evidentiary hearing and bench trial.

Hardt’s order superseded his first ruling and held that “the appropriate fee is the ‘actual cost of duplication.’” In this case, Hardt determined that the actual cost for scanning and copying 206 pages of Brock’s Internal Audit manual onto a disk could not exceed \$206 and another disk of 350 pages of email correspondence was \$1.

Hardt reasoned that Brock could charge one dollar per page for the Internal Audit manual because Brock kept it in hard copy form only and the manual had to be scanned to give to Edwards, according to the final judgment.

“I think what became clear during the case is the clerk does not have a consistent and transparent policy on how to charge,” Edwards told Naples City Desk. “That leaves the door open for retaliation against me or any other citizen.”

*Source: Gina Edwards & Associates LLC v. Dwight Brock, Clerk of Circuit Court, Collier County, Final Declaratory Judgment, No. 2014-CA-436, Naples City Desk*

## Commission removes comment ‘kill switch’

TALLAHASSEE – The Tallahassee City Commission decided to get rid of a microphone “kill switch” to silence speakers at meetings, according to the Tallahassee Democrat.

The commission had two buttons labeled “switch” on the dais that connected to the microphones used by public commenters, the paper reported. Mayor John Marks controlled one switch and

City Treasurer-Clerk Jim Cooke controlled the other.

The kill switch has only been used once, according to the paper. Cooke used his switch in March to silence a citizen for making what Cooke believed to be personal attacks.

The use of the switch incited criticism from citizens and free speech advocates who believed the switch infringed free speech rights, the

paper reported.

Commissioner Nancy Miller told the paper the kill switch gives the impression that the city commission is trying to silence public comment.

“This is the people’s building, and this is the people’s government, and it’s important to me that people do come and participate. I feel we’ve done a great deal,” Miller told the paper. “This one action of putting this kill switch in has negated all of that.”

*Source: Tallahassee Democrat*

ACCESS  
MEETINGS

## County supports EDC appeal

BREVARD COUNTY – The Brevard County Commission voted to support filing a legal brief in an appeal challenging a recent public records ruling involving Brevard County’s Economic Development Commission, according to Florida Today.

The commission voted 4-1 to allow County Attorney Scott Knox to file a “friend of the court” brief challenging the ruling because the commission felt the case could hinder other economic development agencies and local governments in their development efforts, the paper reported.

Circuit Court Judge John Moxley Jr. ruled in March that since the EDC functioned as Brevard County’s economic development agency, any records generated in fulfilling those duties are

public records, according to the paper.

The commissioners believe the case sets a precedent that could adversely affect the EDC’s ability to attract businesses to the region because businesses may fear that their deal would not be confidential when dealing with the EDC, the paper reported.

“The issue has gotten bigger than the EDC itself,” Lynda Weatherman, president and CEO of the EDC told the paper. “No one will invest in the state of Florida.”

The suit stemmed from a lawsuit filed against the EDC by Brevard Clerk of Courts Scott Ellis in an effort to obtain records on EDC’s business dealings with technology company BlueWare, the paper reported.

*Source: Florida Today*

### THE BRECHNER REPORT

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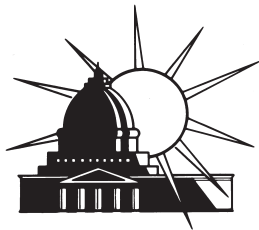
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## Session focused on exemptions, not transparency

Compared to last year, there was little that was typical of the 2014 legislative session. In fact, we saw a record number of new open government exemptions in the 2014 session – 22 new exemptions were created and nine existing exemptions were reenacted. According to news reports, the Legislature passed a total of 255 bills this year, and roughly 12 percent of those were new and reenacted exceptions to our constitutional right of access. Prior to this year's onslaught, the largest number of new exemptions approved was in 2007, when 14 new exemptions were created. While many of the new exemptions are relatively minor and fully justified, others seem designed to do nothing

more than protect special interests.

One new law, CS/HB 775, for example, prohibits disclosure of certain information provided

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By *Barbara Petersen*

by promoters to the Florida State Boxing Commission, including the number of match ticket sales and gross receipts. But publicly-owned venues routinely base the amount to be charged promoters for use of public facilities on total attendance or total ticket sales; without the public's ability to access that information, promoters and public officials will be unduly shielded from censure of any "sweetheart" deals.

Even more alarming is CS/SB 1320 which exempts critical information about family trust companies, allowing access to only the most basic information such as the name of the trust company and its registered agent. In addition, the constitutionally-required statement of public necessity is woefully insufficient, asserting, hypothetically, the exemption is needed to protect the safety of "families with a high net worth who are frequently the targets of criminal predators." There is no factual basis or substantiated evidence supporting this assertion, yet only one legislator, Sen. Arthenia Joyner, voted against the bill. Despite the Foundation's request for a veto, Gov. Scott signed the bill



*Barbara  
Petersen*

into law.

There were a small number of bright spots this year-- for the first time in memory, the Legislature voted to allow an existing exemption for the Scripps Florida Funding Foundation to "sunset" under the Open Government Sunset Review Act.

A law passed last year requiring annual open government training for all constitutional officers was expanded this year to include elected municipal officers. It also requires that those public officers and officials who are required to undergo such training certify completion of the requirement on his or her financial disclosure and financial statement report.

And legislation that increases transparency of citizen support and direct support organizations and the agencies and institutions such organizations support was approved. Although narrowed in the final days of session, CS/SB 1194 is a good first step in making such organizations more open and accessible.

Unfortunately, a proposal that would have provided much needed reform of Florida's public records law failed to win final approval. The bill, SB 1648, was a priority for Senate President Don Gaetz, and although it passed the Senate unanimously, it stalled in the House where it died. Why it died is something of a mystery as the First Amendment Foundation and the Florida League of Cities worked on a series of amendments that all interested parties agreed to and the League's president wrote an editorial in favor of the bill's passage.

So a disappointing session in all respects – failure to pass the first "good" bill introduced in years and a record number of new exemptions created. I think we may have surpassed what former Sen. Dan Gelber called "death by a thousand paper cuts" and moved on to a full scale assault on Florida's constitutional right of access to government information.

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*Barbara Petersen is the president of the First Amendment Foundation, a non-profit organization based in Tallahassee, Fla.*