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# THE BRECHNER REPORT

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## DOC admits destroying two years of records

TALLAHASSEE – The Florida Department of Corrections admitted recently that it destroyed nearly two years of records, according to Scripps Treasure Coast Newspapers.

The DOC's Chief Information Officer Douglas Smith said all data sent and received by DOC staff statewide from January 2007 to September 2008 was destroyed and "are no longer retrievable," the paper reported.

Smith said the records were destroyed

in March 2012 in an attempt to fix a hardware problem at a data center that stores information for state agencies, according to the paper. Smith called the destruction a "significant loss of data."

State agencies are required to keep records under Florida's Sunshine Law and are required to retain documents for a certain amount of time based on the subject of the document, the paper

reported.

The destroyed records covered a troubling time for the DOC, according to the paper. In 2007, the state was under a

lethal injection moratorium after a botched execution, eight prison officials were acquitted in the death of a teen at boot camp, and more than 30,000 incidents were reported

to the department.

*Source: Scripps Treasure Coast Newspapers*

**ACCESS  
RECORDS**

## School board settles lawsuit

BRADENTON – The Manatee County School Board settled a recent Sunshine lawsuit, according to the Bradenton Herald.

Citizens for Sunshine filed a lawsuit against the school board in September, claiming that it violated Florida's Sunshine Law

when approving a security contract for local elementary schools, the paper reported. The school board cancelled the contract after Citizens for Sunshine filed the lawsuit.

The school board voted to settle the

lawsuit by a 4-to-1 vote, according to the paper. The school board agreed to pay \$10,775 in the settlement.

The school board discussed the settlement in a shade meeting, the paper reported. A shade meeting is a private meeting to discuss litigation, and minutes of those meetings do not become

public until the lawsuit is settled.

School board attorney James Dye said the board settled the lawsuit quickly to prevent legal fees from adding up, according to the paper.

*Source: Bradenton Herald*

**ACCESS  
MEETINGS**

## Sunshine Law charge dropped

ORLANDO – A judge dropped a charge against a former Florida lawmaker in the Orlando-Orange County Expressway case, according to The Associated Press.

County Judge Tanya Davis Wilson dismissed a misdemeanor charge against Chris Dorworth, the AP reported. Dorworth was charged with violating Florida's Sunshine Law for allegedly acting as a "conduit" between board members to discuss expressway business privately.

Wilson ruled that the Sunshine Law should not be applied to private citizens,

according to the AP.

"If this application of the law is permitted, private citizens will be hesitant to exercise their First Amendment right to communicate with public officials for fear that their communications will constitute a violation of the Sunshine Law," Davis wrote in her order.

State Attorney Jeff Ashton said his office will appeal the ruling, because it is important that an appellate court addresses the issue, the AP reported. Ashton said no private citizen has ever been prosecuted for violating the Sunshine Law.

*Source: The Associated Press*

**ACCESS  
MEETINGS**

## Pension fund asks court for rehearing

JACKSONVILLE – The Police and Fire Pension Fund is asking the 1st District Court of Appeal to reconsider its ruling, according to The Florida Times-Union.

A three judge panel upheld the circuit

court's ruling that the pension negotiations violated Florida's Sunshine Law, the paper reported.

The Pension Fund filed additional developments in the case with Circuit Judge Waddell Wallace, but the developments did not elaborate on why they were seeking a rehearing or what they planned to argue, according to the paper.

The city of Jacksonville and the Pension Fund are co-defendants in the case, but the Pension Fund alone is seeking a rehearing, the paper reported.

*Source: The Florida Times-Union*

**ACCESS  
MEETINGS**

## University corporations circumvent law

ORLANDO – Florida’s public universities have created corporations to circumvent Florida’s Public Records Law, according to a recent study by The Associated Press. These private corporations oversee athletic programs, dorm construction and salaries.

The AP requested records on staff salaries, donors and contracts from more than 30 university corporations, and not a single entity responded to all three categories. Almost half of the corporations denied the requests entirely, according to the AP.

Under the state law, the university corporations do not have to provide the

same records the universities provide, despite performing many of the same functions and acting on behalf of the universities, the AP reported.

The corporations are embracing another state law that says government agencies are liable for only \$200,000 if they lose a lawsuit, according to the AP. The University of Central Florida was recently successful in invoking this law in a negligence lawsuit with a \$10 million verdict.

Courts across the country are split on whether these organizations should be subject to state public records laws, the AP reported.

“It’s walking like government, it’s talking like government, it’s flapping its authority like government, and so it ought to take on some of the responsibilities and transparency of government,” Florida Senate President Don Gaetz said. “In being a de facto arm of government, it ought to be transparent and ought to be subject to the public record and open meeting laws.”

Gaetz tried to introduce legislation during the last session to make these corporations more transparent but that legislation failed, according to the AP. Gaetz said he will try again to increase transparency.

*Source: The Associated Press*

## Bar investigates airport attorney

TAMPA – The Florida Bar is investigating whether a former Hillsborough County Aviation Authority attorney violated Florida’s Sunshine Law, according to the Tampa Bay Times.

Gigi Rechel recently resigned from the authority, the paper reported.

The Bar confirmed they are investigating a public records violation complaint.

Rechel was allegedly involved in a public records violation earlier this year when she used her personal cellphone to discuss authority business with board member Martin Garcia, according to the paper.

Tampa International Airport spokeswoman Janet Zink said Rechel did not realize her phone was not recording the text messages and attempted to recover the text messages but could not, the paper reported.

The authority now has a program that can save text messages for public records purposes, according to the paper.

The Bar did not indicate that the texting issue with Garcia led to the complaint, the paper reported. Anyone can file a complaint against a lawyer in Florida and the Bar must conduct a preliminary investigation into the complaints.

*Source: Tampa Bay Times*

## Hospital plan records exempt

MARION COUNTY – The health care company leasing a hospital from Marion County will not make its improvement records public, according to the Ocala Star Banner.

Community Health Systems made a 40-year agreement with Munroe Regional Medical Center, the paper reported. Part of that agreement requires making \$150 million worth of improvements, but plans for those improvements will not be public records.

Community Health Systems asked the Marion County Hospital District to keep the improvement plans from the public because it could give other hospitals an advantage if they knew about the plans, according to the paper.

District Executive Director Jon Kurtz told the paper he sought legal advice on whether the records can be kept private, the paper reported. Florida’s Public Records Law requires public hospital records to be open and available to the public, but carves out an exemption for strategic plans.

Linda Fleming, a lawyer for the District, said the improvement plan is considered a “strategic plan” and, therefore, is exempt from public records laws, according to the paper.

Kurtz said the public will eventually know about the improvements when building permits are filed and will be able to see the construction begin, the paper reported.

*Source: Ocala Star Banner*

## Twitter sues for more disclosure

WASHINGTON, D.C. – Twitter filed a lawsuit against the Justice Department, claiming that the government violates its First Amendment rights by limiting its transparency reports, according to The Washington Post.

Twitter wants to be more specific in its biannual transparency reports, the paper reported. Currently, the government permits technology firms to report the number of national security requests in broad ranges, like zero to 999.

“It’s our belief that we are entitled under the First Amendment to respond to our users’ concerns and to the statements

of U.S. government officials by providing information about the scope of U.S. government surveillance – including what types of legal process have not been received,” said Twitter Vice President Ben Lee. “We should be free to do this in a meaningful way, rather than in broad, inexact ranges.”

Twitter indicated the lawsuit was part of a broader push for surveillance reform. It has joined other companies in calling for more transparency in national security disclosures and more governmental oversight.

*Source: The Washington Post*

**OPEN  
GOVERNMENT**

## Group sues county over animal facility

HENDRY COUNTY – A national nonprofit organization filed a lawsuit against Hendry County, claiming that the county violated Florida’s Sunshine Law, according to The News-Press (Ft. Myers).

The Animal Legal Defense Fund claimed Hendry County approved a project to construct a primate breeding facility without public notice and hearing, the paper reported.

Residents around the proposed facility are concerned that macaques housed at the proposed facility will escape, according to the paper. Macaques are a species of monkey linked to the spread of certain diseases, including Ebola and tuberculosis.

“This case is really about whether or not the community gets to have access and input to something that has impacts on their daily lives,” said Justine Cowan, the attorney working with the Animal Legal Defense Fund. “The hope is (the county) will recognize the community deserves to have input into what happens in their community. The process has been unusually secretive, but the underlying, fundamental tenet of Florida’s Sunshine Law is that the government needs to operate in the Sunshine – not behind closed doors.”

Source: *The News-Press (Ft. Myers)*

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## Venice to hold cure meeting

VENICE – The Venice City Council agreed to hold a “cure” meeting to avoid a possible violation of Florida’s Sunshine Law, according to The Venice Gondolier Sun.

The concern about a potential violation stems from a council member giving a position paper on an issue before the council to another council member at a social function, the paper reported.

Kit McKeon handed the position paper on fire department consolidation to Council member Emilio Carlesimo at an exhibit opening, according to the paper. McKeon distributed the paper to the rest of the City Council the following day.

At the meeting where the paper was distributed, Carlesimo said he had already read it, the paper reported. Council member Jeanette Gates expressed concern that reading the paper before the meeting may constitute a Sunshine Law violation.

The City Council agreed to place the issue on a future meeting agenda to cure any legal issues, according to the paper.

“I look at this as I just saved the city from another Sunshine lawsuit,” Gates told the paper.

The cure meeting has not yet been scheduled, the paper reported.

Source: *The Venice Gondolier Sun*

## County abolishes committee

MANATEE COUNTY – The Manatee County Commission voted to abolish a committee appointed to help upgrade the county’s 911 call system, according to the Bradenton Herald.

The Commission voted unanimously to abolish the panel after the city attorney advised them that the committee would be subject to Florida’s Sunshine Law, the paper reported. The ad hoc

committee would have had to discuss any improvements to the 911 system at public meetings.

County Administrator Ed Hunzeker said the discussion on the multi-million dollar upgrade to the system will occur in a less formal process, according to the paper. Hunzeker said he is discussing how to best proceed with municipal police and mayors.

Source: *Bradenton Herald*

## Court rules for location privacy

TALLAHASSEE – The Florida Supreme Court ruled that law enforcement must obtain a warrant before asking a cellphone provider for a customer’s real-time location.

The court found that law enforcement must prove there is probable cause that the customer has committed or will commit a crime before cellphone providers can release location information, according to the opinion.

The case involved a Broward County drug suspect who was traced using court-ordered location information from his cellphone service provider, the Tampa Tribune reported. The Supreme Court determined investigators should have obtained a search warrant, despite the appellate court’s ruling that the warrant was

unnecessary because he was tracked only when he was on public streets.

“We cannot overlook the inexorable and significant fact that, because cell phones are indispensable to so many people and are normally carried on one’s person, cell phone tracking can easily invade the right to privacy in one’s home or other private areas, a matter that the government cannot always anticipate and

one which, when it occurs, is clearly a Fourth Amendment violation,” the Supreme Court wrote.

The Florida Supreme Court is the first state supreme court to find that location information is protected by the Fourth Amendment, according to the paper.

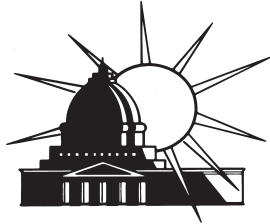
Source: *The Tampa Tribune, Tracey v. Florida, No. SC11-2254*

# PRIVACY

# THE BRECHNER REPORT

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## Florida public records fees must be kept in check

In the technological age of the 21st century, access to public records and information should be a fairly straightforward and efficient process. Unfortunately, in Florida, the methods of obtaining public information are anything but.

Last year, the Center for Public Integrity, a journalistic watchdog group, requested information from Florida's 17th judicial circuit about "the procedures and policies surrounding foreclosure cases."

Officials from the court system informed the CPI that the records were available but would cost the Center more than \$132,000 to obtain.

According to the CPI, general counsel Alexandra Rieman explained these costs by claiming that staff members would have to sort through 149,000 emails, requiring 2,500 work hours at a rate of \$43 or \$45 per hour.

That rate did not include the additional 15-cent charge per page for any records ultimately provided by the 17th circuit.

Unsurprisingly, the CPI refused to pay the open records fees, calling them "excessive."

In another request made by the CPI on July 15 for different foreclosure records, court employees requested a \$66,000 deposit just to begin working.

In many cases, the fees that Florida charges for access to public records are exorbitant and absurd.

The State Integrity Investigation a project of the CPI and two other organizations, Global Integrity and Public Radio International, gave Florida a grade of 'D+' in the category of 'Public Access to Information.'

Although Florida ranked 18th among the 50 states for overall corruption risk, of which 'Public Access to Information' was just one part, that was largely a result of other states being even more dysfunctional than the Sunshine State.

Florida's overall grade was a 'C-,' compared to 25 states that received a 'D+' or worse. No state received a grade higher than New Jersey's 'B+.' Florida, a state that once prided itself on its transparency and open government laws, should not simply settle for being 'less bad' in these areas.

Survey data collected by the SII indicates that there is no state agency responsible for ensuring that state and local officials



Elliot Levy

comply with Florida's public information laws. Instead, "the governor's Office of Open Government and the Florida attorney general's office provide guidance to the public."

The Office of Open Government and the attorney general's office have a great deal of other responsibilities besides ensuring freedom of information. The creation of a government entity tasked with overseeing compliance with these laws and regulations could be one possible way to improve the current expensive and inefficient

process of accessing public records.

Information from Florida government officials and public information advocates has revealed another major obstacle toward inexpensive access to public records: inconsistent and outdated technology.

In an interview with the SII, Patricia Gleason, special counsel for open government in the Florida attorney general's office, identified technological inconsistencies as a major reason for the growing cost of access to public information. "Ask for emails in one jurisdiction and you might be charged \$25. In another because a computer system is out of date and it might be \$200," she said.

James Rhea, general counsel for Florida's First Amendment Foundation, an open records advocacy group, agreed that "the Legislature has not adequately addressed the issue of costs relating to electronic records."

If the fees on public records being charged by Florida government are so excessive that even an open government foundation like the CPI refuses to pay them, it is clear that there is a problem.

If the cost of obtaining and sorting through public records is really as high as Florida government officials claim, then Florida must find more funds in the state budget to cover those costs. Better yet, the state should develop or utilize more advanced technology to lower costs by processing public records more efficiently.

All Floridians deserve the right to access state records at a truly reasonable cost; after all, what is the point of having "public" records if they aren't readily available to the public?

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*Elliot Levy is a UF public relations and political science senior. He is also the opinions editor of The Independent Florida Alligator, the largest student-run newspaper in the United States.*