
THE BRECHNER REPORT

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Compromise reached on attorney's fee bill

TALLAHASSEE – Lawmakers have reached a compromise on a bill that would have made optional an existing requirement that judges award attorney's fees against a party that violated the state's Public Records Law, the Sarasota Herald-Tribune reported.

The original bill, sponsored by Rep. Greg Steube, R-Sarasota, and Sen. Rene Garcia, R-Hialeah, received a lot of pushback, especially from critics who argued the bill infringed on the public's

right-to-know by acting as a disincentive for citizens to file lawsuits over access to public records, the paper reported.

After weeks of meeting with members of the First Amendment Foundation, the

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Florida Press Association, and other free-speech advocates,

Garcia presented a revised bill that addresses the groups' access concerns

as well as the lawmakers' concern over frivolous lawsuits, according to the paper.

The new bill only makes an exemption of attorney's fees when a judge finds a records request was "made primarily to harass the agency or cause a violation of this chapter." The bill also requires a five-day notice to an agency before a lawsuit is filed in cases where the agency clearly identifies its public records custodian, the paper reported.

Source: *Sarasota Herald-Tribune*

Court affirms lower ruling in Sunshine case

TALLAHASSEE – The Florida Supreme Court affirmed a circuit court ruling that the city of Jacksonville, and the Police and Fire Pension Fund violated the Sunshine Law when they secretly negotiated pension benefits, The Florida Times-Union reported.

In the one-sentence opinion, the court upheld a circuit court's ruling, which includes an award of attorney's fees to The Florida Times-Union, who filed the lawsuit in 2013. The city will pay \$131,660, while the pension fund owes \$174,105 for the trial and appeals portions of the lawsuit, the paper reported.

The case arose after the city and the pension fund tried to reach a new pension benefit agreement related to a federal court case in mediation sessions that were closed to the public, according to the paper.

Source: *The Florida Times-Union*

ACCESS MEETINGS

FAMU official aims to cut media access to senate meetings

TALLAHASSEE – The assistant vice president at Florida A&M University's Office of Communications seeks to exclude the media from the Faculty Senate's monthly meetings, according to the Tallahassee Democrat.

The official, Elise Durham, sent an email to Faculty Senate President Bettye Grable and Professor Maurice Holder asking for their assistance with excluding the media from senate meetings, where faculty senators regularly vote on recommendations for curriculum changes. In her email, Durham claims the "meetings are considered internal personnel meetings and, so there really

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is no place for external media, including student media," the paper reported.

Grable was surprised by Durham's request because FAMU is a public institution, which subjects it to the state's Sunshine Law, according to the paper.

Durham has discussed her concerns with FAMU's interim general counsel and believes that meetings where the senate does not vote on agenda items should not be open, the paper reported. However, these meetings have always been open to the media, and student journalists have routinely attended the meetings, according to the paper.

Source: *Tallahassee Democrat*

Hunters' exemption rejected

TALLAHASSEE – Senators rejected a bill that would have exempted identifying information on hunting and fishing licenses from the state's Public Records Law, WUFT reported.

The Rules Committee rejected the measure that would have created a public records exemption for personal information, such as names, addresses, and dates of birth,

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that appear on permits issued by The Florida Fish and Wildlife Conservation Commission, the station reported.

The sponsor of SB 1364, Sen. Alan Hays, R-Umatilla, said the bill was aimed at protecting gun owners from being targeted by potential burglars, according to the station.

However, those who voted against the bill said that Hays' reasoning for the bill was "a reach," the station reported.

Source: *WUFT.org*

Broward Health board to vote in shade meeting

BROWARD COUNTY – The board of the Broward Health public hospital system voted in mid-February to discuss a possible FBI corruption investigation behind closed doors, according to the South Florida Sun-Sentinel.

Broward Health hired a private investigator to look into allegations that the system's lawyers were obstructing an FBI investigation into its affairs. The board

agreed to review the investigator's findings in a private meeting if it could obtain a legal opinion that the meeting would not violate the state's Sunshine Law, the paper reported.

Board Chairman David Di Pietro opposed closing the meeting because "the board should hold itself to a standard of maximum transparency," the paper reported. Based on the advice of Carlos

A. Perez-Irizarry, the board's chief ethics officer and director of corporate security, other members of the board supported the closed meeting, claiming a public meeting could compromise potential investigations, the paper reported.

Ultimately, five board members supported the decision to hold a shade meeting and two opposed.

Source: South Florida Sun-Sentinel

Alachua commissioners face Sunshine complaint

GAINESVILLE – State attorney Bill Cervone is investigating claims that Alachua County Commissioners Robert Hutchinson and Ken Cornell violated the Sunshine Law, WCJB reported.

Ward Scott, a radio talk show host, filed a complaint against the commissioners for several violations, including attending a meeting in Hawthorne that not all county commissioners knew about, according

to WCJB's report. Based on a Facebook post he found, Scott alleged the meeting itself violated the notice requirement and other requirements for open meetings, the station reported.

Scott also said Commissioners Hutchinson and Cornell attended a private meeting at a resident's home where attendees discussed local public issues, like the Florida Department of

Transportation's I-75 Relief Task Force, the station reported. Cornell told TV20 the event was a neighborhood potluck, and that he did not speak to anyone once he saw Hutchinson there and was present for a short time, WCJB reported.

Scott has urged the two commissioners to recuse themselves from voting until the complaint is resolved, the station reported.

Source: WCJB.com

Sunshine Law violation in Mulberry investigated

MULBERRY – Chief Assistant State Attorney Brian Haas is looking into whether two Mulberry city commissioners violated the Sunshine Law by visiting a business site that eventually became an

issue for the City Commission to address, The Ledger reported.

City Commissioner Terry Evers and Mayor George Hatch visited the Central Florida Biomass mulch plant at a city-owned industrial park because Evers suspected the plant was violating composting laws. Evers and Hatch claim they did not discuss city business during the trip, the paper reported.

Evers told Hatch that he should not

have signed an agreement between the city and the plant, but claims they only discussed the issue during a January commission meeting, the paper reported.

City Attorney Frank Comparetto Jr. said the visit would not be a Sunshine Law violation anyway because it was handled by the city's administrators and would not require commission action, according to the paper.

Source: The Ledger (Lakeland)

31st Annual Brechner FOI Award

The annual deadline for the Joseph L. Brechner Freedom of Information Award is approaching. All entries must be received by March 15, 2016.

The Brechner Center sponsors the annual \$3,000 cash award recognizing



excellence in reporting about freedom of information, access to government-held information, or the First Amendment.

For more information, contact The Brechner Center for Freedom of Information at 352-392-2273 or email ssilberman@jou.ufl.edu.

Hendry County monkey Sunshine Law suit heads to trial

HENDRY COUNTY – A jury will decide whether Hendry County officials violated the Sunshine Law by approving two new monkey farms without first holding a public meeting on the issue, according to The News-Press.

The nonprofit Animal Legal Defense Fund sued Hendry County in 2014 for violating the Sunshine Law. However, Circuit Judge James Sloan recently denied both parties' motions for summary judgment and sent the case to trial, the paper reported.

The ALDF argued that the location

of the facilities harms property values and residents' peaceful enjoyment of their property. The ALDF also claims the facilities could pose a public health danger and that residents should have been able to comment on the issue, the paper reported.

The county countered that the facilities are routine staff matters and are not subject to the Sunshine Law, especially since monkey farms already exist in the county, and it was reasonable for the staff to approve more farms within agricultural zones, the paper reported.

Source: The News-Press

Aviation Authority suit dismissed

TAMPA – The Florida Bar Association dismissed a Sunshine Law violation complaint against former Hillsborough Aviation Authority attorney Gigi Rechel, The Tampa Tribune reported.

In a letter to Rechel, The Florida Bar said the attorney did not violate the state's Sunshine Law when she was unable to produce text messages in response to a 2014 records request, according to the paper. The Florida Bar categorized this as an "isolated incident," the paper reported.

Rechel's personal cellphone carrier, Sprint, was unable to provide records of Rechel's text messages after The Tampa Tribune submitted a request for the records, the paper reported. At the time of the request, the paper was considering a story on airport financing.

Airport spokeswoman Janet Zink says that the aviation authority has since put into place a system for maintaining records of text messages between board members, as required by state law, the paper reported.

Source: The Tampa Tribune

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Official submits phone records

DORAL – City Councilman Pete Cabrera will now turn over his cellphone to be searched in response to a Florida court order, after originally refusing to do so, according to The Miami Herald.

The court ordered all Doral City Council members to turn in their phones so a court-appointed company could search them for communication relevant to a pending lawsuit. In 2014, SDE Media sued the city for violating the Public Records Law, alleging the city officials discussed via calls and text messages an ordinance that prohibits SDE Media from putting up a billboard, the paper reported.

After SDE Media requested records from the officials' cell phones, the city discovered that it does not keep accounts of council members' text messages and does not have a policy prohibiting private communication between members via

text message, The Miami Herald reported. SDE Media's attorney, Thomas Julin, said council members "either can't use their cellphones to exchange texts about official business, and if they do, all those messages need to be kept by the city's IT department," the paper reported.

According to the El Nuevo Herald, Councilman Cabrera originally refused to obey the court order, claiming it violated his privacy because the phone was his personal cellphone. When he finally agreed to comply, he insisted that he be present while the phone's data is copied onto a hard drive, and that the hard drive be locked and available only to his attorney and the company appointed by the court to collect the phone records, the paper reported.

Source: The Miami Herald, The El Nuevo Herald

City reviews public records policy

PORT ST. LUCIE – City administrators are reviewing Port St. Lucie's public-records procedure, Treasure Coast Newspapers reported.

The goal is to unify the process for responding to public records requests and to develop a policy to quantify the number of records provided, if no such policy already exists, the paper reported. The review is in response to a Treasure Coast Newspapers investigation that revealed Port St. Lucie takes significantly longer to respond to requests than neighboring cities.

The paper reported that seemingly

simple requests took weeks and, in some cases, months to process. After the investigation, Mayor Greg Oravec said the "article raised many fair questions about our performance," the paper reported. In response, Oravec distributed a memo asking for information about whether the city responds to requests in a "reasonable" amount of time, as required by the Public Records Law.

Councilwoman Shannon Martin suggested the city examine whether there are enough employees to handle the volume of requests, the paper reported.

Source: Treasure Coast Newspapers

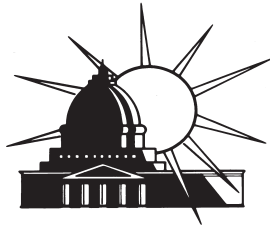


Sunshine Week, a national initiative to promote a dialogue about the importance of open government and freedom of information, is March 13-19, 2016. Show your support for open government by asking elected officials to sign the Brechner Center's Open Government Pledge. To learn more about the program and download the pledge, visit www.brechner.org.

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The problem with discretionary attorney's fees

During the 2016 legislative session, over 120 open government bills have been filed, nearly three-quarters of which would create or reenact statutory exemptions to the constitutional right of access to the records and meetings of Florida government. The most controversial bill this session is one the House sponsor, Rep. Greg Steube, claimed would make a "simple" change to our public records law.

Current law requires a court to award reasonable attorney's fees and costs when the court finds that an agency violated the public records law. Specifically, s. 119.12, F.S., states that if a lawsuit is filed against an agency for a violation of the public records law and "the court determines that such agency unlawfully refused to permit a public record to be inspected or copied, the court *shall* assess and award, against the agency responsible, the reasonable costs of enforcement including reasonable attorneys' fees."

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giving the court the discretion to award reasonable attorney's fees even after finding that the government agency had violated the right of access protected by Florida's constitution.

Florida's public records law is arguably one of the most progressive in the country, but The Center for Public Integrity gave the state an F for public access to information, putting us in the lowest tier among all 50 states. The State Integrity Investigation noted "[t]he problem is not with the laws that make documents public, but the laws that deal with non-compliance." In one sense, this statement is misleading – there are no laws in Florida that deal with non-compliance. But it's also entirely correct – there is no enforcement mechanism in our public records law, making it incumbent upon the citizens of this state to enforce their constitutional right of access to government records through litigation. Rep. Steube's "simple" change to current law effectively eviscerates our ability to hold government accountable for its actions.



Barbara Petersen

According to proponents of the bill, including Florida's League of Cities, the bill is an attempt to thwart a handful of people who are misusing the law by making public record requests meant to trip up an agency – the agency mishandles the request, the requestor files a lawsuit and then offers to settle the suit. Many agencies, worried about the high costs of litigation, are willing to settle even if the claims made are tenuous. It's hard, though, to judge the true scope of the problem of the "Gotcha Guys," as they've been referred to – one House member has called them economic terrorists – but certainly the

poster child is the town of Gulf Stream which claims to have been victimized by over 2,000 public records requests and lawsuits costing the town \$1 million.

However, in all the discussion and debate on the attorney fee bills, little attention has been paid to those on the other side of a public record request – the government agencies – who are abusing or misapplying the law: a public record request for emails that would cost the requestor \$399,000 and take four years to complete; a demand from a government agency for fees associated with producing public records that the agency did not incur; an estimate for costs to produce public records that went from \$37 to \$44,000 and then down to \$350 once an attorney was brought in by the requestor.

Clearly there are abuses on both sides of the issue and what Florida needs is an effective enforcement mechanism, not a knee-jerk response that will make it extremely difficult, if not impossible, for most citizens to enforce their right of access to public records.

At the request of Sen. Garcia, SB 1220 was amended in committee to require a court to award attorney's fees if an agency violated the law and the requestor provided notice of the request to the custodian of records five days before filing a lawsuit. The senate bill, as amended, passed the Senate by a vote of 30 to 0. The House bill, however, has been stalled in committee, and as of this writing, it's not clear whether the legislation will pass.

Barbara Petersen is president of Florida's First Amendment Foundation.