
THE BRECHNER REPORT

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Attorney's fee required in public records cases

TALLAHASSEE – The Florida Supreme Court held 5-2 that public agencies are liable for attorney's fees if they violate a provision of the Public Records Law.

The Court rejected the argument that agencies should be shielded from having to pay attorney's fees when the agency has handled records requests in

“good faith.”

Writing for the majority, Justice Barbara Pariente explained, “There is no additional requirement, before awarding attorney's fees under the Public Records Act, that the trial court

find that the public agency did not act in good faith, acted in bad faith, or acted unreasonably.”

**ACCESS
RECORDS**

The case arose out of a dispute about records requested from the Board of Trustees of the Jacksonville Police and Fire Pension Fund, and came after lawmakers this year considered a measure that would have made attorney's fees a discretionary award.

Source: Board of Trustees, Jacksonville Police & Fire Pension Fund v. Lee, No. SC13-1315

Microsoft sues DOJ over gag order statute

SEATTLE – Microsoft has filed a lawsuit against the U.S. Department of Justice, challenging the constitutionality of a statute which permits the issuance of gag orders that prevent companies like Microsoft from disclosing when the government obtains a search warrant to read people's emails, The New York Times reported.

Microsoft claims the statute violates the public's Fourth Amendment right to know when the government searches or seizes private property and violates the company's First Amendment right to

speak to its customers, the paper reported.

The issue focuses on information stored on cloud-based computing systems, according to the paper. Since investigators can go straight to the company that hosts the information and a court may issue the tech company a gag order on the matter, a target of such an investigation may never become aware that information was taken, the paper reported.

In its complaint, Microsoft claims

PRIVACY

the government has “exploited the transition to cloud computing as a means of expanding its power to conduct secret investigations,” according to the paper.

From September 2014 to March 2016, Microsoft received nearly 6,000 requests from the federal government for customer information or data, nearly half of which were accompanied by gag orders, the paper reported. Approximately two-thirds of those gag orders had no time limits, according to the paper.

Source: The New York Times

Valencia College students challenge vaginal probe ruling on First Amendment grounds

ORLANDO – Valencia College students have filed a First Amendment challenge to a controversial court ruling over forced vaginal probes in a medical technology class, the Orlando Sentinel reported.

Three female students sued the college last year, claiming they had been forced to undergo weekly vaginal probes in the classroom, the paper reported. In October, Orlando federal judge Gregory Presnell issued a ruling in favor of Valencia, holding the college did not violate the students' civil rights,

according to the paper.

The appeal focuses on the backlash the students faced after complaining to the faculty about the procedures, the paper reported. The lawsuit alleged the students had to drop out of the program due to retaliation, according to the paper.

Several free speech groups have submitted amicus briefs in support of the students' First Amendment rights, including the Student Press Law Center,

**FIRST
AMENDMENT**

the Foundation for Individual Rights in Education, and the American Society of Journalists, the paper reported.

Will Creeley, an attorney at the Foundation for Individual Rights in Education, said “If the judge's ruling for Valencia was allowed to stand, students would have to conclude that if they complain about a curriculum — even a harmful curriculum — that they could be punished,” the paper reported.

The appeal is pending in the 11th Circuit Court of Appeals.

Source: Orlando Sentinel

ACCESS RECORDS

City officials face possible investigation over records

AVON PARK – City Manager Julian Deleon has asked the Florida Department of Law Enforcement to investigate possible Public Records Law violations by elected and appointed Avon Park officials, according to Highlands Today.

The possible Public Records Law violation stems from a request made by Andy Marcy, an Avon Park firefighter, for documents related to a city council meeting from October of last year, the paper reported.

After Marcy submitted the records request, Maria Sutherland, then-city clerk and now the city's director of

administrative duties, informed Deleon that the video files from the council meeting contained some derogatory statements that were made after the meeting had officially adjourned, according to the paper. Deleon claims Sutherland did not want to release the damaging footage, the paper reported.

In January, an alleged technical malfunction led to the misplacement of the video, according to the paper. Sebring Computers was able to recover two video files, but a third file could not be recovered or burned onto a disk, the paper reported.

Source: Highlands Today (Sebring)

Court rules UCF must disclose names of accused students

DAYTONA BEACH – Florida's 5th District Court of Appeal ruled that names of student government officials accused of engaging in misconduct in impeachment documents were subject to the Public Records Law.

The ruling addresses the University of Central Florida's "obligation to produce records that would identify students who were the subject of allegations of hazing misconduct or students who were the subject of allegations of misconduct related to their performance, election, and/or appointment as student government officers."

Writing for the court, Judge Kerry I. Evander explained that student disciplinary records are generally protected under the Family Educational

Rights and Privacy Act (FERPA) and thus exempt from the Public Records Law. The court concluded that personally identifiable information contained within documents regarding alleged hazing incidents qualified as FERPA-protected student disciplinary records.

However, the court reasoned that the names of student government officers charged with or accused of misconduct in the performance of their duties are not protected under FERPA because officers implicitly consent to the disclosure of that information given Florida's statutory scheme governing university student governments.

Source: Knight News, Inc. v. University of Central Florida, No. 5D14-2951

Media company withdraws subpoena for phone records

DORAL – SDE Media, a billboard company that sued the city of Doral for alleged Sunshine Law violations, has withdrawn its subpoena for councilmembers' cellphone records, according to The Miami Herald.

However, SDE has not dropped the lawsuit, the paper reported.

SDE attorney Tom Julin says he is merely amending the original subpoena to exclude three people who are not council members, but were originally included in the records request, the paper reported.

The lawsuit stems from a 2014 dispute between SDE Media and the city of Doral after the city council rejected a request to place a billboard in one of Doral's busiest intersections, according to the paper. SDE Media alleged there was collusion among council members to vote against the measure, the paper reported.

At the end of March, SDE Media claimed the city failed to provide all of the council members' cellphone records, in violation of an earlier court ruling, according to the paper. However, SDE Media withdrew its subpoena after the city filed four motions for protective orders that claimed the subpoena would invade personal privacy, the paper reported.

Source: The Miami Herald

Humane Society sues Fish and Wildlife Service

WASHINGTON – Humane Society International, an animal rights group, has filed a Freedom of Information lawsuit against the U.S. Fish and Wildlife Service for withholding information related to the importers and exporters of animals, Reuters Legal reported.

The complaint alleges that for years the Fish and Wildlife Service routinely

responded to FOIA requests with the identities of individual importers and exporters of animals and animal parts and the value of the items, the news service reported.

The Humane Society says it uses this information to evaluate trends and

create strategies, but the Fish & Wildlife Service suddenly decided the information was exempt from disclosure starting in 2014, according to the news service.

The Fish and Wildlife Service said the change was due to new supplemental guidance on confidential business information, the news service reported.

Source: Reuters Legal

**FREEDOM
OF INFORMATION**

Group asks IRS to justify FOIA withholdings

WASHINGTON – A two-yearlong Freedom of Information battle related to the Internal Revenue Service’s policies for auditing churches continues as the plaintiff filed a court motion to order the disclosure of more information.

The Alliance Defending Freedom specifically filed the motion with the U.S. District Court for the District of Columbia in order to compel the IRS to produce a complete index that justifies withholding information under FOIA.

According to its motion, ADF submitted its FOIA request in July 2014 for records related to the procedures for church tax inquiries or examinations from January 2009 to 2014.

ADF claims the IRS produced thousands of heavily redacted records and withheld over 10,000 pages in response to the records request, but did not provide explanations for why the redacted and missing information should be exempt.

Source: Alliance Defending Freedom v. IRS, No. 1:15-cv-00525-EGS (Motion)

FOIA suit to uncover CIA prison

NEW YORK – The American Civil Liberties Union filed a lawsuit claiming the Bureau of Prisons violated the Freedom of Information Act by withholding documents related to a secret CIA prison in Afghanistan, CBS News reported.

The Bureau of Prisons rejected a year-old FOIA request filed by the ACLU for documents related to a 2002 inspection of the prison, known by its nickname, “The Salt Pit,” and by its code name, “COBALT,” the network reported.

The visit to the detention site was documented in a 2014 Senate Intelligence Committee report on torture, interrogation and detention, according to the network.

The report describes the prison as a “dungeon,” where naked prisoners were shackled to the walls in total darkness, the network reported.

Despite the Senate report, the Bureau of Prisons responded to the ACLU’s FOIA request by saying it had no files related to its COBALT visit, according to the network.

John Rizzo, the former General Council of the CIA, said in an interview that it is possible the CIA could have classified certain documents by maintaining ownership over the records related to the Bureau of Prisons’ investigation, the network reported.

Source: NBC News

Bill to make National Security Council subject to FOIA again

WASHINGTON – A proposed House bill would allow the public to request public records from the National Security Council under the Freedom of Information Act again, according to Politico.

Rep. Jackie Walorski, R-Indiana, filed H.R. 4922 in response to growth in the NSC’s size and a number of complaints related to its management of military commanders, according to the website.

The measure would effectively overturn a two-decades-old court ruling that put the NSC outside of FOIA’s reach,

the website reported. The NSC had been subject to FOIA until a panel of the D.C. Circuit Court of Appeals ruled in 1996 that the NSC was not an agency under federal law because its function was to advise and assist the president, according to the website.

Even if the bill passed and restored FOIA coverage of NSC documents, the President and his aides would still maintain discretion over what records to make public, the website reported.

Source: POLITICO

ACLU files FOIA lawsuit against Department of Education

BOSTON – The American Civil Liberties Union and National Consumer Law Center have filed a lawsuit against the U.S. Department of Education, claiming it violated the Freedom of Information Act.

The groups filed the complaint 10 months after submitting a FOIA request to the Department of Education for information concerning the department’s debt collection practices, the policies governing the private collection agencies with which it contracts, and the policies for monitoring disparate effects on debtors of color.

The central concern of the complaint

is to uncover how the Department of Education monitors the impact of rising student debt on communities of color, who are twice more likely than white adults to have student debt to begin with. Student debt currently totals more than \$1.2 trillion, and over \$120 billion of that is in default.

The complaint concedes that the Department of Education handed over some of the requested documents, but claims the documents were unlawfully redacted.

Source: Am. Civil Liberties Union Found., Inc. v. U.S. Dep’t of Educ., No. 1:16-cv-10613 (Complaint)

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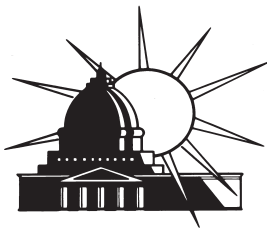
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Exposing the dark side of mass surveillance

Brussels. Paris. San Bernadino. Madrid. And of course there's September 11. Each of these high-profile terrorist attacks against Western targets has served as renewed justification for the U.S. intelligence community to continue its widespread bulk data collection of Americans.

Many journalists, like Glenn Greenwald, [scholars](#), and [editorial boards of prominent publications](#) have warned about how these surveillance programs may have dangerous consequences for U.S. democracy, most notably, its potential ability to “chill” online

The Back Page

By Elizabeth Stoycheff

political discussion. But, to date, these have been mere speculations and hypotheticals, unsupported by any real data or research. So, armed with this array of anecdotes, I set out to conduct the first study to test how these mass surveillance programs influence average Americans' online behavior. I exposed a group of Internet users to a “terms of agreement” statement, like those routinely found on social media and other websites, to prime individuals that any opinions they post online may be susceptible to surveillance by the U.S. government. Exposure to such a message dampened individuals' willingness to express unpopular political views. These effects were found among people who felt they held political opinions different from those of most Americans, among those who thought surveillance was acceptable and even necessary for the sake of national security, and in a recent follow-up analysis I conducted, among racial and ethnic minorities.

Hence, the opinion leaders were right: Mass surveillance chills. And it does so in a way that suppresses the ideas of those on the fringes of society, while amplifying dominant, mainstream opinions. This severely jeopardizes the Internet's ability to serve as a neutral conduit of information sharing and discussion for all, instead catering only to those who speak the loudest.



Elizabeth Stoycheff

Even since early 2015 when this study was conducted, surveillance in established democracies has become increasingly pervasive and complex, harder to detect, and used in tandem with private enterprise. As we continue the uninterrupted march into an era of big data, this study should serve as yet another red flag, signaling the need for greater transparency, skepticism, and research about these surveillance programs.

There is a lot that can – and needs – to be done to alter the security versus privacy zero-sum narrative that has dominated the media and political landscape since 9/11. In the recent Apple versus FBI debate, a majority of [Americans said they supported the Justice Department's order](#) for Apple to unlock the iPhone used by one of the San Bernadino suspects, even if it opens backdoors to our personal data that cannot be closed. Many others simply didn't know what to think. This is where effective public diplomacy efforts can come in. Shifting this discussion so Americans understand that civil liberties are just as fundamental to the country's long-term well-being as thwarting very rare terrorist attacks is a necessary move.

The public and legislators alike need to confront that protecting the First Amendment is no longer about just preventing pre-publication censorship; it's about removing all barriers – including mass surveillance programs – that encourage self-censorship and stifle the free circulation of ideas. In the meantime, the priority should be keeping this issue in the forefront of public consciousness such that both media and policymakers can give it the type of attention it so rightfully deserves.

Elizabeth Stoycheff is an Assistant Professor in the Department of Communication at Wayne State University in the heart of Detroit. Her research focuses on how new media influences public opinion and its implications for democratic development and sustainability.