
THE BRECHNER REPORT

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Court of Appeals says officer was justified in arrest

ELEVENTHCIRCUIT—The 11th Circuit Court of Appeals ruled that a Miami police officer was within her rights when she arrested a cameraman who was

COURTS

videotaping the arrest of a fellow journalist.

The court said that Officer Jennifer Pastor was “acting within her discretionary authority” when she arrested cameraman Albert Durruthy and immune to the civil rights lawsuit he filed against her. Because the state has a law that prohibits people from walking in the street when a sidewalk is available, Pastor had probable cause to arrest Durruthy, the court said.

In April 2000, during protests over the U.S. government returning Elian Gonzalez to Cuba, Durruthy saw NBC cameraman Bruce Bernstein getting arrested. He began to videotape the arrest, and after being ordered by police to get out of the street, began to walk backward toward the sidewalk. Pastor threw Durruthy to the ground before he reached the sidewalk and arrested him for resisting an officer.

Later, the state attorney dropped charges, and Durruthy filed complaints against Pastor and the Miami Police Department. Pastor’s motion to dismiss the case was denied by the U.S. District Court in Miami, a decision that the U.S. Court of Appeals reversed. In his dissenting opinion of the appeal court’s decision, visiting Judge Norman Stahl said the arrest was unreasonable and that Durruthy was “an obvious member of the media acting within the scope of his journalistic duties.”

Marc Wites, Durruthy’s attorney, filed for a rehearing of the case soon after the appeal’s decision was made. (12/19/03)

U.S. Supreme Court dismisses FOIA case

WASHINGTON—The U.S. Supreme Court declined to hear an appeal by groups seeking access to the government’s records on hundreds of foreigners detained after Sept. 11, 2001.

The decision allowed the government to continue withholding the names of detainees and information about their arrests. The Center for National Security Studies, the American Civil Liberties Union and several media organizations had petitioned for the release of the information, claiming the Bush administration was violating the Freedom of Information Act and their freedom of the press rights.

Government officials argued that they needed to withhold the information so that terrorist organizations wouldn’t discover their strategies and tactics in the war against terrorism. Last year, a three-judge panel of the U.S. Court of Appeals for the District of Columbia

Circuit agreed that the administration’s claim to protect the information from terrorists was “reasonable.”

“We have a situation where the government arrested more than a thousand people in secret, and the courts have let them get away with it,” Kate Martin, director of the Center for National Security

Studies, said about the D.C. Circuit’s ruling. She said the decision breaks “200 years of tradition in which arrests have always been public.”

The Justice Department has recognized that more than 1,200 people have been detained in connection with the 2001 terrorist attack investigation. Since 2001, the government has released the names of 100 criminal defendants while acknowledging that 762 detainees are being withheld on immigration charges and 50 are material witnesses.

Yet, that leaves about 300 people “for which we never got a clear explanation,” Martin said. (01/13/04)

ACCESS RECORDS

Group files brief to stop secret dockets

FORTLAUDERDALE—The Reporters Committee for Freedom of the Press is asking the 11th U.S. Circuit Court of Appeals to stop the practice of secretly docketing cases.

In its friend-of-the-court brief, the national journalists group also asked that the appeals court require lower courts to justify the need for secrecy at public hearings regarding the case of convicted Colombian drug lord Fabio Ochoa.

“In recent months, it has become evident that the U.S. District Court for the Southern District of Florida maintains a dual, separate docket of public and non-public cases,” the committee’s Executive Director Lucy Dalglish said.

The brief asked the court to decide whether secret dockets, sealed docket entries and closed hearings without public notice violate protections set by

the First Amendment. In the appeal, the journalists group challenged the secret plea bargain and sentencing of Nicolas Bergonzoli who did business with Ochoa. His case did not appear on the court’s public docket where it would have been scanned into a computer file.

When Ochoa’s lawyers were finally able to unseal parts of the file, he was on trial and Bergonzoli had already entered a secret plea bargain and was never called to testify. Defense attorneys claim that the court’s secrecy blocked their access to a potentially important witness.

“...the Reporters Committee submits that an open system of criminal justice would be far less vulnerable to such an accusation,” the Committee’s brief said. “...as it stands, the mystery enveloping the proceedings against Bergonzoli...only adds fuel to such claims.” (1/8/04)

Newspaper drops commissioners from violation suit

DAYTONA BEACH – The Daytona Beach News Journal Corp. dropped two Ormond Beach commissioners from a lawsuit that accused them of violating the state’s Sunshine Law.

The suit, filed two years ago, said that Commissioners Jeff Boyle, Joyce High and Jim Privett organized the firing and rehiring of City Manager Isaac Turner. The lawsuit focused on comments made by the three officials to rehire Turner after voting to fire him less than eight hours earlier.

The Sunshine Law prohibits officials from holding secret conversations that are related to council business. Elected officials can only discuss city business at public meetings.

Attorney Jake Kaney, representing the News Journal, said Privett and High were dropped from the remaining count of the lawsuit because their council terms ended Jan. 6.

The remaining count’s purpose is to prevent commissioners from violating the Sunshine Law, but after January, “there will be nothing for the court to enjoin,” Kaney said.

Boyle remains part of the lawsuit since he will continue as a commissioner. Circuit Judge John Watson is slated to hear the suit against Boyle in April.

After the trial is over, Kaney said he will consider appealing the circuit court’s decision to dismiss one count of the original lawsuit.

This count asked the court to declare that the commissioners violated the Sunshine Law. (12/29/03)

County School District board officials unintentionally violate Sunshine Law

ST. JOHNS COUNTY – St. Johns County School District officials admitted they failed to provide notice to the public about their meeting with legislators and, therefore, unintentionally violated the Sunshine Law.

The meeting was discussed at a previous workshop meeting, which was open to the public, but a written notice was never provided to the public or the media. The Sunshine Law says that the meetings of public boards or commissions must be open to the public, reasonable notice of the meetings must be given and minutes of the meeting must be taken.

School Board attorney Tracy Upchurch said he thought the written

notice of the meeting was given and he is not sure of the legal ramifications the district could face for the unintentional violation.

“For there to be a violation, board members must knowingly violate the law...” he said. “And the board members considered this a workshop meeting, which is advertised to the public. What happened was simply an administrative mistake and it’s unfortunate.”

Joseph Joyner, superintendent of schools, said everyone is welcome to see the district’s legislative platform.

“We took minutes and anyone who wants to have an understanding of what was said can contact our district office,” he said. (12/20/03)

Investigation clears officials of violations

BRADENTON BEACH – The State Attorney’s Office decided not to pursue ethics complaints that accused five local leaders of violating the Sunshine Law.

Officers launched an investigation after the city’s former building official Bob Welch alleged that three city commissioners and two board members may have committed Sunshine violations, misused their positions or lied about their credentials. According to Bradenton Beach Det. Sgt. Leonard Diaz, the officials’ “lack of knowledge” accounted for questionable e-mail communications. After the investigation, the office decided not to take action against members named in the complaint.

“He [Welch] reported what he thought was suspicious activity, turns

out there was none, and there you have it,” former commissioner Scott Barr said.

The new commission had placed Welch and three other department heads on a 90-day probation to see if they were achieving city goals. Welch later resigned, claiming he couldn’t do his job because the commission doubted his ability and integrity.

Assistant State Attorney Ed Brodsky’s report recommended that the leaders receive Sunshine Law training. According to Barr and Board of Adjustment member Ken Lohn, new commissioners and board members receive a Sunshine Law manual, but don’t have any additional training on the issue.

(1/7/04)

Limbaugh’s medical documents resealed

WEST PALM BEACH – The 4th District Court of Appeal ordered prosecutors to hand over radio commentator Rush Limbaugh’s medical records to a circuit court. The documents will remain sealed until the appeal is further reviewed.

Another ruling said the American Civil Liberties Union (ACLU) can join Limbaugh in fighting to keep the records sealed. The decisions followed two circuit court rulings that temporarily resealed Limbaugh’s records after the prosecution was granted access to the documents on Dec. 22, 2003. It

was not clear if they had any time to review them prior to the judge’s reversal.

The ACLU joined the case in January by filing papers in the West Palm Beach circuit court supporting Limbaugh.

Prosecutors claimed they needed access to the records as part of their investigation to determine if Limbaugh violated prescription drug laws by obtaining several prescriptions from many doctors. Limbaugh admitted to having a painkiller addiction, but his attorneys argued that seizing his records violates his privacy. (1/14/04)

DECISIONS ON FILE

Copies of case opinions, Florida Attorney General opinions, or legislation reported in any issue as “on file” may be obtained upon request from the Brechner Center for Freedom of Information, College of Journalism and Communications, 3208 Weimer Hall, P.O. Box 118400, University of Florida, Gainesville, FL 32611-8400, (352) 392-2273.

ACCESS RECORDS

Two thousand child abuse and neglect records improperly destroyed by DCF

TAMPA – According to a state investigation, about 2,000 records on child abuse and neglect were destroyed improperly.

A branch of the Florida Attorney General’s Office was responsible for the destruction of the records, including active files with lawyers’ notes and other research documents, according to a state investigation. Authorities do not know what specifically was lost or how this incident may affect children.

Child abuse and neglect records must be kept for seven years, according to state law, but the Department of Children & Families (DCF) keeps them for 50, a DCF spokesman said. But, in this case, officials failed to keep a log of the shredded documents.

“That’s where I goofed,” Assistant Attorney General and manager of the state Children’s Legal Services Division in Tampa and Bradenton Bill Navas said. Navas decided which documents to destroy.

Navas claimed that he was simply following orders to “clean up the files” when he and aide Connie Denaro First

supervised the shredding of the records.

But, more than two weeks before the order, he had requested money for the job. In addition, the documents were destroyed after work hours without file room manager Lisa Vice’s awareness. The files were taken from a building where confidential records were accidentally auctioned off with some old furniture in May 2002. The division claimed that the records had been destroyed without “malicious intent to harm children” or state government.

According to Vice, some of the records may have been closed, but they contained trial notes and medical records that wouldn’t be filed with the DCF or the courts. If a case were to be reopened, none of that information would be available.

“The courts don’t destroy them,” she said. “Why would we destroy them?”

Navas and First received a written reprimand from Assistant Deputy General Counsel Jerry Curington that they violated a policy “that has been known or should have been known to the employee.” (01/11/04)

Complaint filed against executive director for aiding, abetting Sunshine violation

LAKE CITY – The State Attorney’s Office filed a civil complaint against the Florida Crown Workforce Executive Director for aiding and abetting a violation of the Sunshine Law.

John Chastain could face a \$500 fine, but does not meet the requirements for criminal charges, according to Jerry Blair, state attorney for the Third Judicial Circuit.

“He is not considered subject to the Sunshine Law, which is why he is charged with aiding others to commit a violation of the Sunshine Law.” Blair said. “He is an employee, as opposed to a member of the board.”

Florida’s 2003 *Government-in-the-Sunshine* manual states that “any member of a board or commission or of any state or local agency or authority who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree.”

In addition, any public official who

violates the law is guilty of a noncriminal infraction which is punishable by a \$500 fine.

Blair said it appeared that Chastain met with two board members in violation of the Sunshine Law.

“In this case, the members of the board did not commit a willful violation of the law by attending a meeting held without proper notice,” he said.

Therefore, Blair said, the board members will not be charged with violating the Sunshine Law.

Chastain can contest the civil infraction, “just like a traffic citation,” Blair said.

“He is assessed the fine if the judge finds he violated the law or he admits either through a plea of no contest or guilty that he violated the law,” Blair said. “The judge will determine the amount of the civil penalty.”

(12/17/03)

ACCESS MEETINGS

Case against *The Herald* dismissed

MIAMI – An appellate court upheld a lower court’s decision to dismiss a lawsuit against *The Miami Herald* that charged the paper with invasion of privacy, libel and infliction of emotional stress.

Attorney David Efron filed the lawsuit on behalf of his 16-year-old daughter Jennifer, after columnist Joan Fleischman wrote an article about the teenager’s traffic ticket for careless driving and citation for curfew violation.

Fleischman also mentioned that Efron showed up during the issuing of the ticket with his dinner date, Miami-Dade State Attorney Katherine Fernandez Rundle. The column discussed personal information about Efron and Rundle’s respective pasts. Efron claimed that Jennifer suffered “extreme and severe emotional distress” because of the article. He argued that her rights as a minor were violated when her name was printed in connection with the citation.

Sanford Bohrer, the newspaper’s attorney, said that *The Herald* simply printed information from a public record.

Efron also alleged that the article in Fleischman’s “Talk of Our Town” column contained “false and defamatory” statements about Jennifer because, although she did receive a ticket, she was later acquitted at her traffic hearing. The traffic court records showed she was actually found guilty, but adjudication was withheld because it was her first offense. (1/1/04)

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LEGISLATIVE PREVIEW

TALLAHASSEE – The state legislature will consider more than 25 bills dealing with Florida’s Sunshine Law during this year’s session, which convenes in March.

Below is a list of bills taken from the Florida Legislature’s home page, Online Sunshine, at <http://www.leg.state.fl.us/>. Chief sponsors of the bills are in parentheses next to the bill numbers.

S114 (Committee on Education; Clary, R-Destin)

Public Records and Meetings Exemptions - Creates exemption from public records requirements for specified materials, actual and potential trade secrets, and information identifying donors to Florida Institute for Human and Machine Cognition, Inc.; creates exemption from public meetings requirements for meetings of not-for-profit corporation or subsidiary at which exempt records are discussed; provides for future legislative review and repeal.

S150 (Saunders, R-Naples)

Ethics Code Violations - Provides exemption from public records and public meetings requirements for proceedings regarding information or referrals received by Commission on Ethics regarding Ethics Code violations; provides release of such information to criminal investigative agencies; provides for future legislative review and repeal; provides finding of public necessity.

S348 (Committee on Judiciary; Peaden, R-Crestview)

Personal ID Information - Creates exemption from public records requirements; provides confidentiality of personal identifying information contained in records for U.S. Attorneys, assistant U.S. Attorneys, judges of U.S. Courts of Appeal, U.S. District judges, U.S. Magistrate judges and their spouses and children; provides future repeal and legislative review under Open Government Sunset Review (OGSR) Act of 1995.

S410 (Committee on Governmental Oversight and Productivity; Bennett, R-Bradenton)

Public Records Exemption - Creates exemption from public records requirements to include building plans, blueprints, schematic drawings and diagrams held by public agency and relating to specified facilities,

developments and structures; provides exceptions; provides for legislative review and repeal; provides definitions; provides statement of public necessity.

S462 (Committee on Health, Aging, and Long-Term Care)

Child Fatalities - Saves exemptions which are provided for certain records and meetings concerning child fatalities from repeal under OGSR Act; deletes exemption provided for certain records obtained by hospital or health care practitioner which relate to child fatalities; revises penalty applicable to unauthorized disclosure of confidential information concerning child fatalities.

S464 (Committee on Governmental Oversight and Productivity; Health, Aging, and Long-Term Care)

Employees at Medical Facilities - Revises public records exemption for specified information concerning certain employees of hospitals, ambulatory surgical centers and mobile surgical facilities; saves exemption from repeal under OGSR Act; deletes provisions that provide for repeal of exemption.

S466 (Committee on Health, Aging, and Long-Term Care)

Statewide Guardianship Office - Amends provision regarding public records exemption for certain records held by Statewide Public Guardianship Office; saves exemption from repeal under OGSR Act; deletes provisions providing for repeal of exemption.

S468 (Committee on Health, Aging, and Long-Term Care)

Hospital Board Meeting – Amends provision regarding public meetings exemption for certain portions of hospital board meetings; saves exemption from repeal under OGSR Act; deletes provisions that provide for repeal of exemption.

S578 (Fasano, R-New Port Richey)

Health Department - Exempts from public records information and records reported in Health Departments under electronic monitoring system for prescription of controlled substances listed in Schedules II-IV; authorizes certain persons and entities access to patient-identifying information; provides guidelines for use of such information and penalties for violations; provides for future legislative review and repeal;

provides finding of public necessity.

S652 (Fasano, R-New Port Richey)

Law Enforcement Officers - Provides that law enforcement officer’s personal and private records that are in possession of law enforcement agency because of complaint investigation are exempt from disclosure under Public Records Law; defines term “personal and private records” for purposes of exemption; provides for future legislative review and repeal; provides findings of public necessity.

S674 (Committee on Health, Aging, and Long-Term Care)

Home Medical Equipment Provider - Saves exemption for information concerning patients of home medical equipment provider from repeal under OGSR Act; deletes provisions that provide for repeal of exemption.

S712 (Committee on Governmental Oversight and Productivity; Commerce, Economic Opportunities and Consumer Services)

Business Records - Revises public records exemption for business records submitted in eminent domain negotiations on business damages; provides for confidentiality; prescribes information that is confidential and exempt from disclosure; provides access by employees of an agency; provides penalty for disclosure; specifies that information may be offered in evidence; provides statement of public necessity.

S1054 (Smith, D-Gainesville)

Public Records Modernization TF - Recreates trust fund without modification; carries forward balances and continues sources and uses thereof.

S1162 (Committee on Communication and Public Utilities)

Wireless 911 Board Information – Amends provision regarding exemption from public records requirements provided for proprietary confidential business information held by Wireless 911 Board or State Technology Office; saves exemption from repeal under OGSR Act; deletes provisions that provide for repeal of exemption.

S1460 (Campbell, D-Tamarac)

Crime Lab Personnel Public Records - Creates exemption from public records requirements; provides confidentiality of

LEGISLATIVE PREVIEW CONTINUED

personal identifying information contained in records of personnel of crime laboratory or medical examiner's office and their spouses and children; provides for future repeal and legislative review under OGSR Act of 1995; provides statement of public necessity.

S1592 (Siplin, D-Orlando)

FCAT Parents' Review - Allows student's parent or guardian and accompanying assistant to review questions and student's answers to those questions on Fla. Comprehensive Assessment Test and other state-required academic assessment tests; requires Department of Education to ensure that department and school districts honor requests for such review; provides for damages for violations; provides for costs and attorney's fees incurred in seeking compliance and payment of damages.

S1626 (Margolis, D-Miami Beach)

Archival Material Public Records - Provides exemption from public records requirements for manuscript or other archival material donated to and held by official archive of municipality or county and subject to special terms and conditions that limit right to copy or inspect manuscript or material; requires that such manuscript or other archival material be made available for inspection and copying after specified period or pursuant to court order.

S1660 (Fasano, R-New Port Richey)

Stroke Treatment Centers Public Records - Creates exemption from public records requirements for certain documents produced by certified stroke treatment centers; exempts portions of meetings or proceedings at which records or reports concerning specific patients are discussed from public meeting requirements; provides for future legislative review and repeal; provides findings of public necessity.

S1678 (Committee on Governmental Oversight and Productivity)

Public Records - Authorizes petition for order to make public records pertaining to certain investigations by the Department of Children and Family Services; provides certain restrictions regarding electronic recordkeeping systems and proprietary software; provides that reproductions from electronic recordkeeping system of

specified documents and records of the Department of Insurance shall be treated as originals for purpose of their admissibility in evidence.

H147 (Ambler, R-Tampa)

H. Lee Moffitt Center - Expands public records exemption for proprietary confidential business information owned or controlled by H. Lee Moffitt Cancer Center and Research Institute to include information regarding methods of manufacture or production, potential trade secrets, potentially patentable material and proprietary information received, generated, ascertained or discovered during course of research.

H317 (Reagan, R-Sarasota)

Public Records Exemption - Creates exemption from public records requirements for building plans, blueprints, drawings and diagrams held by public agency and relating to specified facilities, developments and structures; provides retroactive application of exemption; provides exceptions and definitions; provides for legislative review and repeal; provides statement of public necessity.

H399 (Harrell, R-Port St. Lucie)

Health Department Information - Exempts from public records requirements information and records reported in Health Department under electronic monitoring system for prescription of controlled substances listed in Schedules II-IV; authorizes certain persons and entities access to patient-identifying and practitioner-identifying information; provides guidelines for use of such information and penalties for violations; provides for future legislative review and repeal.

H433 (Gibson, R-The Villages)

Law Enforcement Officers - Provides that law enforcement officer's or correctional officer's personal and private records in the possession of a law enforcement agency or a correctional agency because of complaint investigation are exempt from disclosure under the Public Records Law; defines the term "personal or private record" for purposes of exemption; provides for a future legislative review and repeal; provides findings of public necessity.

H565 (Clarke, R-Sarasota)

Public Records and Meetings

Exemptions - Exempts from the public records and public meetings requirements of certain records of Florida Self-Insurers Guaranty Association, Incorporated, and the meetings of board of directors of association; provides for a future legislative review and repeal; provides findings of public necessity.

H593 (Evers, R-Milton)

Personal ID Information - Creates exemption from public records requirements; provides for confidentiality of personal identifying information contained in records for U.S. Attorneys, assistant U.S. Attorneys, judges of U.S. Courts of Appeal, U.S. District judges, U.S. Magistrate judges and their spouses and children; provides for future repeal and legislative review under OGSR Act; provides statement of public necessity.

H619 (Kendrick, D-Carrabelle)

EMTs' Personal Information - Provides exemption from public records requirements for home addresses, telephone numbers, social security numbers and photographs of active or former emergency medical technicians or paramedics certified in compliance with specified provisions, home addresses, telephone numbers, social security numbers, photographs and places of employment of spouses and children of such EMTs and paramedics.

H621 (Ambler, R-Tampa)

Financial Regulation Office - Creates exemption from public records requirements for information obtained by Financial Regulation Office of Financial Services Commission in connection with investigations under Florida Consumer Finance Act; provides privilege against civil liability for persons who furnish information or evidence to office; provides statement of public necessity.

H635 (Vana, D-West Palm Beach)

Children's Recreation Program - Provides an exemption from public records requirements for names, home addresses, telephone numbers, social security numbers and photographs of children who participate in government-sponsored recreation programs or camps, names and locations of schools attended by such children, and names, home addresses, telephone numbers and social security numbers of the parents or guardians of such children.

Phase two: Justice delayed is justice denied

This is the second in a series of articles concerning the results of the federal Freedom of Information Act audits conducted by the National Security Archive.

The admonition that “Justice Delayed is Justice Denied” has particular significance when applied to the federal Freedom of Information Act (FOIA). As President Lyndon Johnson recognized when he signed the Act into law in 1966, FOIA “springs from one of our most essential principles: A democracy works best when



Meredith Fuchs

the people have all the information that the security of the Nation permits.” With such lofty goals, it is not surprising that Congress initially imposed

a 10 business day time limit on federal agency responses to FOIA requests (now 20 business days). Yet, when FOIA requesters instead are forced to wait 5, 10, or even 15 years to get a response to an inquiry about government activities, the public’s opportunity to impact those activities is effectively denied.

The Back Page

By Meredith Fuchs

Phase Two of the National Security Archive’s FOIA Audit showed just such a breakdown in the administration of FOIA. While the federal agencies report ever growing numbers of FOIA requests being processed more quickly each year, these statistics mask the true state of affairs. After finding that the response times and backlog numbers reported by government agencies were far out of line with the Archive’s own experience as a frequent FOIA requester, the Archive asked 35 federal agencies that handle over 97% of the FOIA requests for their 10 oldest pending requests. The Archive found that many agencies have long-unanswered requests that are either ignored or avoided.

Specifically, the Archive found that the oldest unanswered FOIA requests in the U.S. government date back to the late 1980s, before the collapse of the Soviet Union. These include a 1987 inquiry from *San Francisco Chronicle* reporter Seth Rosenfeld on FBI activities at the University of California at Berkeley in the 1960s. Other old outstanding requests dating to the 1980s came from the Lancaster, Pennsylvania *Intelligencer Journal*, *The Nation* magazine, ABC News, the National Security Archive and a graduate student at the University of Southern California, who now is a full professor.

These extreme delays undercut the purpose of the FOIA, making it impossible for the Act to serve the purpose of

informing the electorate and permitting public debate. It certainly serves the purpose of discouraging journalists and others working on a deadline from using the FOIA.

The Audit also raises a larger question of how we can ever hope to improve the FOIA when the principal tool for assessing how it is administered – the agencies’ annual reports to Congress – are so flawed that they hide the existence of these extreme backlogs. Not only do the median processing times that are reported give no hint that such aged requests are still pending (or the average time a FOIA requester can expect to wait), but they do not include the delays from referrals to other agencies or wrangling over fees, which can add months to the process.

In addition, agencies have inflated the number of apparent FOIA requests by logging as FOIA requests a range of inquiries, including Privacy Act requests. Generally speaking, a Privacy Act request is for personnel, medical or other easily identifiable and locatable records. The result of this policy is that some agencies’ annual FOIA reports document remarkably high numbers of FOIA requests and, often, remarkably short processing times. This is best illustrated by the Department of Veterans Affairs’ reported 1,496,191 FOIA requests for 2002 compared to its 210,371 requests for 1998.

The irony is that the resulting claim that federal agencies are processing ever growing numbers of requests at a faster rate makes it even more outrageous that there are requests that have been pending over 15 years. If millions of requests can be processed in one year, how come one request from a journalist about a matter of significant public concern cannot be completely processed in 15 years?

There is no real remedy for the waiting FOIA requester. They can file a lawsuit, and the court will impose a schedule on the agency to complete the processing of the request. But, the hurdle of initiating litigation certainly was not what was intended by Congress when it sought to open the government to the public.

Meredith Fuchs is the General Counsel of the National Security Archive, a non-profit research institute in international affairs and a public interest law firm defending and expanding public access to government information through the FOIA. A full copy of Phase Two of the FOIA audit can be found on its Web site at www.nsarchive.org.