
THE BRECHNER REPORT

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Tampa City Council gets Sunshine Law refresher course

TAMPA – City Council members were given a refresher course on Florida’s Sunshine Law, following an investigation by the state Attorney General’s Office.

Citizen activist Terry Neal, who filed a complaint after a Tampa City Council

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meeting, prompted the investigation. Council members had

been attending private lunches with the Greater Tampa Chamber of Commerce quarterly for years, participants said. A *St. Petersburg Times* reporter brought attention to the situation after happening upon one of the luncheon meetings.

“It’s illegal and I was shocked,” Neal said. “The Sunshine Law has been in place for many years and has helped the media, but for average citizens, I don’t think we have tested the limits of the law.”

Florida’s Sunshine Law says government officials must notify the public when two or more of them meet to discuss business. The chamber and council failed to notify the public of their Feb. 12 meeting.

Council Chairwoman Linda Saul-Sena said the meetings shouldn’t have taken place without public notice and access, but council’s legal advisor, Gina Grimes, disagreed.

To clear up confusion, City Attorney Fred Karl asked Patricia Gleason, general council to Attorney General Charlie Crist, to conduct a workshop with the council.

Gleason discussed the law’s requirements with the council and about 30 city employees and advisory board members.

“...This is the way [citizens] believe the government should operate,” Gleason said. (3/12/04)

Supreme Court declines to hear case, sets precedent for secret proceedings

WASHINGTON – The U.S. Supreme Court declined to hear the case of Mohamed Kamel Bellahouel, whose legal status is being kept secret because of the government’s war on terrorism.

Bellahouel, an Algerian native who is married to an American woman, waited tables at a restaurant in Delray Beach at the same time that several terrorists were training in South Florida for the Sept. 11, 2001 attacks.

Federal agents detained him in October 2001 on an immigration hold, believing he may have served two hijackers food and possibly attended a movie with one of them. David Silk, his immigration lawyer, said FBI agents investigated him and found no reason to charge him.

Bellahouel was released on an immigration bond, but his entire case was kept off of public records, according to *The Miami Herald*. His case number did not even officially exist. His case was accidentally discovered by a reporter for *The Miami Daily Business* and has been

closely watched by civil libertarians since.

The government’s argument to keep the case sealed to protect national security was never made public, and Bellahouel’s federal assistant public defender, Paul Rashkind, claimed he can’t say a lot about the case because of court orders.

Tallahassee lawyer Barry Richard said the Court may have passed on Bellahouel’s case because it will likely consider other detainee cases that deal with more fundamental issues, like that of accused “dirty” bomb plotter José Padilla.

Floyd Abrams, a First Amendment advocate, fears the precedent this case presents.

“The problem is that we now have a precedent for entirely secret judicial proceedings and that until the court does take such a case, we will always be at risk of more proceedings being held in secret,” he said. (2/24/04)

COURTS

Former superintendent files lawsuit, claims state Sunshine Law violations

FORTMYERS – Former Superintendent John Sanders filed a lawsuit against four of five Lee County school board members, claiming they violated Florida’s Sunshine Law and state Public Records Laws.

Sanders’ lawyer, Richard Johnston, said the suit is based on the testimony of former district auditor Martha Roberts, who swore under oath in a separate case that the school board members conspired to fire Sanders.

The accused school board members

denied any wrongdoing and said that Sanders’ poor performance led them to fire him.

In January, an administrative judge agreed they had a right to do so.

But Johnston claimed that Roberts’ testimony gives him the ammunition he needs to prove that Sanders was fired because of back room deals.

“If there is a violation of the Sunshine Law, any action taken outside of the Sunshine Law is void,” he said. “That means it never happened.” (3/18/04)

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U.S. government records available at Florida college

NAPLES – U.S. government records and information are now accessible to students and the public through International College’s Information Resource Center. The Florida college is the first Federal Depository designee in the 14th Congressional District, which includes Collier and Lee counties, as well as a part of Charlotte County.

“This is very important because the Sunshine State is renowned for its Government in the Sunshine Laws,” Florida Congressman Porter Goss said. “It creates a bond between the government and its people.”

Congress established the Federal Depository Library Program in 1813. Its designated libraries provide records and information on careers, business opportunities, consumer information, health and nutrition, legal and regulatory matters and demographics.

According to Goss, the International College staff members were responsible for applying for the Federal Depository designation. Melody Hainsworth, the college’s vice president for Information Resources and Services, led the designation project.

“It’s [the library] going to provide a mountain of information not only for the students here, but for the entire community,” he said. “It’s going to be used a lot, for the right reason. It will serve the people of this country.”

He added that the information is accessible online at www.internationalcollege.edu/irc/govdocs.htm in addition to on site. (2/24/04)

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.

Search warrants opened to the public

PANAMA CITY – Circuit Judge Dedee Costello ruled in favor of *The News Herald* and ordered search warrants in the *Girls Gone Wild* criminal case open for public inspection.

Her ruling, the first by a state court judge, connected a constitutional right to the public’s right to access served search warrants.

“The bright glare of sunlight should be focused on the Court’s records to insure that the respect enjoyed by the Courts will endure,” Costello wrote in her ruling.

Last year, *Girls Gone Wild* producer Joseph Francis was arrested in Panama City Beach after a search of his condominiums and private jet. *The News Herald* asked for copies of the search warrants to determine the probable cause investigators used to initiate the search. Traditionally, such documents are available to the public after the search warrant is served.

But, after a call to the State Attorney’s

Office, County Judge Thomas Welch denied the newspaper’s request. Welch said he was concerned about sensitive information in the affidavits and asked the prosecutors for an opinion on releasing the documents. Prosecutors argued that search warrants should be sealed if their release would compromise an ongoing investigation, citing the decision in *Florida Publishing Co. v. State*.

Costello disagreed after looking at *The News Herald* attorney John Bussian’s argument that the situation should be looked at as a constitutional issue. Costello ordered the Bay County court to “allow access to the records sought.”

“This Court must conclude that the public’s right to be involved and knowledgeable about its Court system cannot be impugned by a blanket rule that makes no distinction between executed and unexecuted search warrant materials,” Costello said in her ruling. (3/03/04)

ACLU says Matrix could invade privacy

TAMPA – The American Civil Liberties Union (ACLU) believes that a new multistate police database tool invades the privacy of American citizens, according to its “Data Mining Moves into the States” issue brief.

The Multistate Anti-Terrorism Information Exchange (Matrix) was created by Seisint Inc., a Florida company, and gives police computerized access to numerous records.

Recently, more than two-thirds of the 16-member states withdrew from the Matrix. In March, New York and Wisconsin withdrew, leaving only five actively involved states: Florida, Michigan, Pennsylvania, Connecticut and Ohio.

In the past, Florida officials assured the public that the Matrix would only contain public records that police normally use in routine investigations. In addition, they promised the system would not be used for data-mining, which analyzes data from several sources to identify patterns of suspicious activity.

The ACLU claimed it found documents showing the system will be used to find potential terrorist activity by looking at billions of pieces of information on all Americans.

Congress disapproved this kind of

data-mining last year when it refused funding for the Pentagon’s Terrorism Information Awareness (TIA) program, which attempted to analyze numerous databases of personal information to find terrorists.

But, according to a *St. Petersburg Times* editorial, the extent of federal involvement in developing the Matrix exceeds normal policing. The system was created with a \$4-million grant from the Justice Department and the

Department of Homeland Security has promised an additional \$8 million. The FBI, Secret Service and former Immigration and Naturalization Service all assisted in its development.

The ACLU determined that the Matrix will not be restricted to freely available public records, as initially claimed. According to a slide show obtained from the Michigan Department of State Police, the system will offer “20+ billion records from 100s of sources,” including commercial databases.

The ACLU filed a request with the Florida Department of Law Enforcement on Oct. 20, 2003, to obtain information on the kinds of commercially collected information that will be part of the Matrix. To date, the agency has not responded. (3/15/04)

PRIVACY

Grand jury report to be made public

WEST PALM BEACH – A judge ruled that the Department of Juvenile Justice (DJJ) must make a grand jury report on a girls' prison available to the public.

The report included taped testimony from Florida Institute for Girls' managers, workers and inmates. Jury members were examining problems at the suburban West Palm Beach prison, including sexual misconduct and the use of violent restraints.

Frank Kreidler, American Civil Liberties Union attorney, sued the agency last year under the Public Records Law, arguing that the state should not hold back an impartial citizen review.

"A public agency like the DJJ has a duty and responsibility to answer critical reports such as the grand jury report, not to try to keep them hidden from the public," Kreidler said.

One of the state's juvenile justice officials asked Chief Circuit Judge Edward Fine to expunge the entire report, or parts the department felt were "improper."

Fine ruled that the four disputed sections were relevant and based on facts and, therefore, would stay in the report. He added that one of the department's objections "does not dispute any facts or conclusions, but promises that the agency will do a better job in the future."

Spokeswoman Catherine Arnold said the department does not want to hide the report, but simply make sure that it is accurate.

The agency will respond to the report and take "whatever actions are necessary based on the grand jury recommendations or findings," she said. (2/20/04)

DCF ends tape-recorded reports

MIAMI – The Department of Children & Families (DCF) administrator stopped requiring tape-recorded memos from her deputies to avoid possible public records violations, according to *The Ledger* (Lakeland).

Deputy Secretary Cathleen J. Newbanks will no longer ask her eight department heads to do their weekly reports on audio tape.

The concern came about after *The Miami Herald* asked for copies of reports and the agency had trouble locating them. Six tapes were found, but it took days to find an additional 14 records in Newbank's car.

Officials told *The Herald* that one or two of the records may have been erased or taped over.

Patricia Gleason, general council to Attorney General Charlie Crist, said that state law requires all correspondence to be retained for at least three years before it can be destroyed. She added that public records should not be kept in officials' homes or cars.

Newbanks, who joined the DCF in November 2003, said she told colleagues they could tape over their recordings to save taxpayers money.

She claimed she wasn't aware of Florida's Public Records Laws and their strong requirements.

"She has now been advised of Florida's Public Records Laws and the error will not recur," Sam Kramer, chief of staff for DCF Secretary Jerry Regier, said. (1/27/04)

Court rules that county violated law

HERNANDO COUNTY – The 5th District Court of Appeal ruled that Hernando County must include the public in meetings to review development plans.

The decision upheld Senior Judge John W. Booth's ruling on the suit filed by the Coalition for Anti-Urban Sprawl and the Environment (CAUSE.)

In 2002, the environmental group filed suit against the county over a Wal-Mart SuperCenter that was completed last year. The group claimed that the

development review committee meetings violated the state's open government law by excluding the public and, therefore, Wal-Mart's permit should be invalid.

The appellate court found that the meetings did violate the Sunshine Law, but didn't invalidate the permit.

The county was required to pay the legal fees of lawyer Ralf Brookes, who represented CAUSE.

"Now that the litigation is over, we'll probably review this and decide what to do next," Kurt Hitzemann, assistant county attorney, said. (1/21/04)

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Clear Channel pays fine for indecency

TAMPA – Clear Channel Communications, Inc. paid a record \$755,000-fine for airing indecent material, according to an article in *The Tampa Tribune*.

The Federal Communications Commission (FCC) proposed the fine on Jan. 27 for crude comments in broadcasts by deejay Bubba "the Love Sponge" Clem.

Clear Channel decided to pay the fine on the final day of the 30-day period in which it could appeal.

"We fully accept our responsibility for airing inappropriate content, and our company will accept the consequences," Clear Channel Radio President and Chief Executive Office John Hogan said.

The company also announced its new "responsible broadcast initiative," including employee training and possible consequences for indecent remarks.

"[The company] simply does not want to be associated with indecency," Hogan said. "We know we can deliver great radio without compromising our integrity as broadcasters."

Clear Channel's fine was the largest single indecency fine ever proposed by the FCC. The largest cumulative fine was \$1.7 million in 1995, paid by Infinity Broadcasting for material aired by host Howard Stern.

Clem was fired from WXTB on Feb. 23, despite his strong ratings. (3/05/04)

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Florida open government laws true to Lincoln's vision

Government in the sunshine has been a cherished right in our state for many generations of Floridians. Over the years, the Sunshine and Public Records Laws have opened the doors to countless governmental meetings and records that are hidden from the public in other states.

Every day, Floridians use these laws to make their communities a better place to live and work. They

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By Charlie Crist

and countless other ways, President Lincoln's vision of a government of the people, by the people, and for the people, stands the test of time.

In Florida, government records and meetings are generally open to the public unless the Legislature has adopted a statute providing for confidentiality. Individual agency officials do not decide on their own which government records should be open and which should remain secret. Openness is the rule unless the Legislature determines that privacy, security or other significant interests prevail and justify closure.

The Florida Constitution helps to secure open government by making it difficult to undermine the public's right of access, unless compelling reasons for nondisclosure are present. Enacted in 1992, the open government constitutional amendment provides that exemptions to the Sunshine and Public Records Laws must state the public necessity justifying the exception and may be no broader than necessary to accomplish that purpose.

In 2002, Floridians voted overwhelmingly to strengthen the constitution by approving an amendment requiring a 2/3 vote of each house of the Legislature before exemptions could be enacted into law. When questions arose whether a 2/3 vote was required in every instance, this office responded with an advisory opinion stating that the constitutional amendment is clear — a 2/3 vote is required for all exemptions, whether newly enacted or readopted.

Some lament that the opinion results in a slower review process for exemptions, but we must not forget that the will of the people must prevail. Open government is right for Florida and any exceptions to that rule must be carefully considered.



Charlie Crist

Our laws and constitution provide the strong foundation for open government to flourish at both the state and local levels. However, public officials must know the law in order to ensure that citizen rights are protected. The Attorney General's Office has historically made open government education and training a priority, and I intend to continue that important commitment.

Each year, the Office of the Attorney General prepares the *Florida Government in the Sunshine Manual*, which is used as a reference for the Sunshine and Public Records Laws by government officials and citizens alike. The manual, published by the First Amendment Foundation, summarizes public access court decisions, legislation and advisory opinions issued by this office.

We also write and distribute a public records guide for law enforcement agencies that is designed to address the special public records issues affecting criminal justice agencies. Electronic editions of both publications, as well as answers to frequently asked questions about open government, are available at the Office of the Attorney General Web site: <http://myfloridalegal.com>.

The Sunshine and Public Records Laws give every Floridian the ability to secure the information needed to support programs that work and dismantle those that do not, and to be knowledgeable of meetings where issues affecting the citizens are being discussed.

Without knowledge, we can neither learn from the past nor prepare for the future.

It is my hope that agencies at all levels of government will take advantage of the public meetings and records training opportunities offered by the Attorney General's Office, the First Amendment Foundation and governmental organizations. Our General Counsel and open government expert, Pat Gleason, has conducted countless hours of training in this important area.

Our challenge is to ensure a compliance rate of 100 percent for public officials at all levels. As Floridians, we must require nothing less from our government.

Charlie Crist is Florida's 35th Attorney General. Prior to taking the position in January 2003, he served as Florida's Commissioner of Education.