
THE BRECHNER REPORT

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Bush moves FOIA Ombudsperson

WASHINGTON, D.C. – Even though Congress passed – and President Bush signed – the Open Government Act of 2008, which placed the Office of Government Information Services (OGIS) at the National Archives and Records Administration, the Bush Administration has moved the \$6 million funding package for an ombudsperson to the Department of Justice.

“Such a move is not only contrary to the express intent of the Congress, but it is also contrary to the very purpose of this legislation – to ensure the timely and fair

resolution of American’s FOI requests,” Sen. Patrick Leahy, D-Vt., said in a Senate floor speech.

The Open Government Act placed the OGIS at the National Archives after critics said the Justice Department failed to address chronic backlogs of requests for information from the public and the media.

If the OGIS does move to the Justice Department, it will be handling disputes over records from many of the federal agencies already represented by the Justice Department.

Source: Austin-American Statesman

State Attorney found ‘no evidence’ that mayor violated Sunshine Law

FORT PIERCE – The State Attorney’s Office said it found “absolutely no evidence” that Mayor Bob Benton and two unnamed city commissioners violated the Sunshine Law when they decided to hear an appeal regarding the demolition of the historic Governor’s House.

“I’ve always obeyed the Sunshine Law and was very surprised about the complaint. It was absurd, and I’m just glad it’s over,” Benton told the *Ft. Pierce Tribune*.

**ACCESS
MEETINGS**

The complaint, which was filed by Pollyanne Wester, raised concerns that Benton and the two commissioners discussed the appeal behind closed doors. The investigation report found that City

Manager Dennis Beach had called Benton and the other commissioners to get a consensus in order to add the item to the agenda

but that they had not discussed how they planned to vote.

Source: Ft. Pierce Tribune

School board members cleared of possible Sunshine violations

COLLIER COUNTY – The State Attorney’s Office dismissed allegations that three Collier County School Board members violated the Sunshine Law after completing a preliminary review.

Board Chairwoman Linda Abbott and board members Steve Donovan and Richard Calabrese were accused of conspiring in private to fire former Superintendent Ray Baker last year.

“Concerns about whether the board made the correct decision, or about the

timing or procedures used in the firing or hiring of a superintendent are outside our legal authority,” wrote Assistant State Attorney Dean R. Plattner in an October 2007 memo.

“Nothing additional has been forthcoming, however, therefore, we have no basis upon which to open a criminal investigation at this time,” said State Attorney Stephen B. Russell, according to the *Naples Daily News*.

Source: Naples Daily News

Newspaper recoups fees

FORT LAUDERDALE – The Federal Emergency Management Agency will pay 75 percent of the *South Florida Sun-Sentinel’s* attorney fees following a legal battle for the identities of disaster-aid recipients of the 2004

Florida hurricane season.

COURTS

FEMA agreed to pay more than \$146,000 to the newspaper, ending the legal battle that began in March 2005 when FEMA refused to release the names or addresses of aid recipients because of privacy concerns.

In a related suit with *The News-Press* (Fort Myers), FEMA agreed to pay it more than \$100,000 in attorney fees.

Source: South Florida Sun-Sentinel

Tribune sues for tutors’ names

TAMPA – *The Tampa Tribune* sued the University of South Florida in the Hillsborough Circuit Court for access to records containing the names of tutors used by the university athletic department’s Academic Enrichment Center.

Although the university released a partial list of the tutors to the newspaper, it withheld the complete list, citing student privacy laws. The partial list contained the names of tutors who were not students at USF.

The Tribune contends that the full list of the tutors should be released under the Florida Public Records Law.

Source: The Tampa Tribune

**ACCESS
RECORDS**

Everglades cleanup efforts may be kept secret

FORT LAUDERDALE – The South Florida Water Management District (SFWMD) will pursue a \$10 million program to jump-start “clean technologies” research, but the initiative might be exempt from the Public Records Law.

SFWMD contends that companies equipped to create water-cleaning technologies would not participate if their practices were subject to public

scrutiny, according to the *South Florida Sun-Sentinel*.

The proposal includes the appointment of three trustees, who would create a new entity responsible for operating the fund, and the appointment of a fund manager.

Although advisory boards and other appointed government bodies are subject to the Florida Public Records Law, SFWMD attorneys will ask the Florida

Legislature to exempt the proposed venture capital fund from public disclosure.

Governing board member Harkley Thornton said the potential environmental and fiscal benefits are “legitimate” reasons for an exemption.

Periodic fiscal reports would allow public oversight of the fund, Thornton said.

Source: South Florida Sun-Sentinel

Records left vulnerable in trash

BROOKSVILLE – Public records of the Hernando Circuit Court that are earmarked for destruction will no longer be left in easily accessible trash bins in the public recycling area.

Hernando’s vulnerable record-disposal system was discovered after a citizen complained that he had found documents containing citizens’ personal information dumped in easily accessible trash bins in the Hernando County Government

Center’s recycling area.

Hernando County Clerk of the Circuit Court Karen Nicolai said she is implementing a new system in which documents set for disposal will be kept in secure bins.

“I guess I didn’t realize how easy those bins were to access. We’ve been doing it that way for years,” Nicolai told the *St. Petersburg Times*.

Source: St. Petersburg Times

Public record copy fees waived for county employees, agencies

COLLIER COUNTY – Collier County commissioners unanimously approved new rules that allow county employees, members of the county advisory boards and individual county commissioners to make public records requests without incurring the usual copy charges.

The rules also allow other government entities to request records from the county free of charge as long as they reciprocate

the free-record service to the county government.

In practice, the county was already providing its government officials with cost-free records, but the vote made the practice official.

The general public still has to pay 15 cents per page for copies of public records.

Source: Naples Daily News

Bar task force reviews limitations on attorney-client privilege

LEON COUNTY – The Florida Bar’s Attorney-Client Privilege Task Force will study limitations on the attorney-client privilege created as a result of legal representation for public agencies, which are subject to the Florida Public Records Law.

Although exceptions exist for attorney-client privilege between public agencies and their attorneys, the laws are difficult to implement and sometimes fail to protect the privilege, according to Marcos Jimenez, chair of the task force studying the issue.

Jimenez noted that conflicts sometime

arise because the law allows a public agency to meet with its attorney in private to discuss ongoing litigation, but a court recorder must take a transcript, which becomes public record once the litigation is over.

“[G]overnment agencies right now have a hard time securing advice from their counsel without running into a lot of issues...A client who cannot consult with his attorneys outside his opponents’ presence may face insurmountable obstacles,” Jimenez told the *Florida Bar News*.

Source: Florida Bar News

Weekly busted for escort ads

ORLANDO – Three advertising sales representatives from the *Orlando Weekly* were arrested in a sting operation after police videotaped *Weekly* employees selling advertising space to undercover officers who openly claimed to be prostitutes.

FIRST AMENDMENT

The employees were charged with aiding and abetting prostitution and profiting from it. The *Weekly* was indicted for racketeering and was accused of knowingly profiting from prostitution.

According to *The Associated Press*, the free alternative paper contends the arrests infringed on its First Amendment rights.

“These charges are outrageous and we are confident they will be dismissed in due course. The arrests are a blatant attempt to infringe upon the First Amendment rights of this newspaper and its advertisers,” said Rick Schreiber, the *Weekly*’s publisher, in a statement.

The *Weekly* said the crackdown was retaliation for stories it published that were critical of the organized crime task force that conducted the sting.

Source: The Associated Press

EDITOR’S NOTE – Each month, The Brechner Report compiles news and information about media law issues across Florida and the nation. Our sources for these stories are often other media outlets, newspapers, and the Internet. In an effort to help our readers track stories of interest, we now include our primary source of information following each story.

DOJ may seal online pleas

WASHINGTON, D.C. – A recent Department of Justice proposal to the Judicial Conference of the United States would eliminate online access to all nonsealed plea agreements in criminal cases.

Such records would remain available for inspection by the public at federal courthouses.

Nonsealed criminal plea agreements are currently available online via an electronic public access service called Public Access to Court Electronic Records (PACER).

The service allows users to obtain case and docket information from federal appellate, district and bankruptcy courts, and the U.S. Party/Case Index.

The DOJ argues that public access to defendants' names might make them vulnerable to intimidation or retaliation because defendants often promise to cooperate with the government.

But making public access to records inconvenient won't necessarily improve security, according to some experts.

"Those bent on exploiting public records for improper purposes are the least likely to be deterred by attempts to make them harder to access," said Laura L. Prather, co-chair of the American Bar Association Section of Litigation's First Amendment and Media Litigation Committee, according to *Litigation News*.

Source: *Litigation News*

Court rejects mayor's effort to delete parts of critical report

WEST PALM BEACH – The 4th District Court of Appeal ruled that portions of a grand jury report about a government official's alleged manipulation of a public meeting rebroadcast will not be deleted from the report.

The investigation criticized Mayor Lois Frankel's delay of a 2004 rebroadcast on the city's public access cable channel of a city meeting in which citizens criticized the city's efforts to fight crime. Frankel has not been charged with a violation of the Public Records Law.

Judge Robert Gross wrote in the appellate ruling, "As the challenged language in the report was a part of the grand jury's investigation into the conduct

of public officials, the comments were not unlawful."

Frankel contends that she stopped the rebroadcast because the city's police chief had expressed concern that discussion at the meeting might cause racial strife among residents. An hour after halting the rebroadcast, Frankel allowed it to resume.

Although the court's decision will allow the contested language to remain in the record - which eventually becomes public - Frankel told the *Palm Beach Post* that wasn't her main concern. She said she wanted city staff to be able to interrupt broadcasts for emergency purposes without violating the Public Records Law.

Source: *Palm Beach Post*

ACCESS MEETINGS CONTINUED

Closed-door consensus questioned

MARCO ISLAND – In a closed-door session, the Marco Island City Council decided to appeal a ruling declaring Marco's boat anchoring ordinance unconstitutional.

Before the council's regularly scheduled open meeting, City Manager Bill Moss and attorneys Alan Gabriel and Dan Abbott met with council members in what Council Chairman Mike Minozzi called an "attorney-client session."

But the closed meeting raised concerns over whether the council's decision constituted decisive action in a closed meeting, which is prohibited by the Florida

Open Meetings Law. Gabriel told the *Bonita Daily News* that the consensus reached at the meeting was not an action.

"There was no formal vote. It was like a workshop. People just sat and talked," Gabriel told the newspaper.

Councilman Glenn Tucker also denied that a vote had occurred.

"If there was a vote to take we would have done it in a public meeting. Earlier we had decided to proceed with prosecution. We simply had a consensus not to curtail that," Tucker told the *Bonita Daily News*.

Source: *Bonita Daily News*

Manager hired with little notice

PINELLAS COUNTY – State officials and media attorneys criticized the Tampa Bay Water utility board after it held what they considered an unannounced meeting to vote for a new general manager.

Tampa Bay Water, the state's largest regional wholesale utility, usually advertises a notice of its board meetings and the agendas on the utility's Web site. But the meeting in which the vote for general manager occurred was advertised in an obscure publication that circulates to only a few lawyers and two dozen public libraries.

With minimal notice to the public, the board held the meeting 10 days before it

was originally scheduled.

According to the *St. Petersburg Times*, the utility's general counsel, Richard Lotspeich, argued that the utility followed the law.

"If nobody showed up, that's not our problem," Lotspeich said.

The board's actions were criticized by Pat Gleason, Florida's Director of Cabinet Affairs and Special Counsel for Open Government.

"I've never seen anything like it... You can question whether there's a real commitment to open government," Gleason told the *St. Petersburg Times*.

Source: *St. Petersburg Times*

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Brechner Center for Freedom of Information
3208 Weimer Hall, P.O. Box 118400
College of Journalism and Communications
University of Florida, Gainesville, FL 32611-8400
<http://www.brechner.org>
e-mail: brechnerreport@jou.ufl.edu

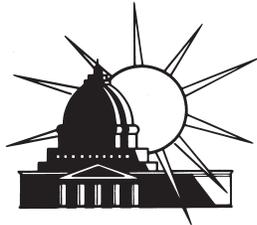
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Ana-Klara Hering, Editor
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Danielle Navarrete, Production Assistant

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University of Florida
Brechner Center for Freedom of Information
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Openness, transparency make government accountable

Florida's Government-in-the-Sunshine laws give our citizens an extraordinary opportunity to participate in government at all levels. President Abraham Lincoln said, "Government [is] of the people, by the people, [and] for the people." His words remind us that the people of Florida, our boss, hold us accountable for serving them well. Such transparency is vital to our democracy, which is why my first official act as Governor established the Office of Open Government (Executive Order 07-01). Since its creation, the Office of Open Government has opened the window into Florida's government processes even wider. We then launched a Web site that conveniently locates public records information for all state agencies (www.flgov.com/og_home). In addition, most state agency Web sites now feature a link to open government information.

The Back Page

By *Charlie Crist*

In December, we announced a new partnership with Google that is making it easier to access public information through the Internet. We learned that search engines could not access information on state Web sites because it was stored behind a database. Now, with improved technology, search engines can access and index records such as the Department of Environmental Protection's reports regarding water and waste permitting and the Department of Education's information on individual schools. Other Florida agencies that can be accessed include Department of State, Department of Business and Professional Regulation, Florida Department of Law Enforcement and the Agency for Workforce Innovation. Additional agencies are working to make their Web site information accessible.

We also continue to educate state employees about Florida's open government laws. A partnership with the Florida Institute of Government at Florida State University allowed us to provide free Sunshine Law training to 500 state agency managers. At last count, about 900 state employees had registered for the training – up 1,400 percent from 2006.

To receive input from experts on open government, I created the Commission on Open Government through Executive Order 07-107 in June. I charged the Commission to "review, evaluate,



Charlie Crist

and issue recommendations concerning policies, statutes, and Article 1, Section 24 of the Florida Constitution, relating to the public's right of access to government meetings and records."

Commission members are holding public hearings throughout the state to understand how to reform Florida's Sunshine Law to better benefit the people. They held three public hearings and meetings last year and plan to hold another later this year. Last August, citizens suggested that Florida open the clemency process to applicants. In response, on October 31 we opened

some secrecy provisions in clemency documents. In addition, Commission member Secretary Butterworth recommended that the Commission endorse legislation to make Department of Children and Families' records more open in child and adult abuse cases.

Citizens also pointed out problems with open records enforcement and suggested a "bill of rights" for requesting government records and attending meetings. In response, we created an Open Government Bill of Rights for state agencies through Executive Order 07-294 on November 15. The Commission, in partnership with the Office of Open Government, is responding to your requests and suggestions.

By the end of the year, the Commission will report to me, the Senate President, and the Speaker of the House of Representatives with additional suggestions and recommendations for strengthening Florida's open government laws. Meanwhile, the Office of Open Government continues to be an important advocate for the people of Florida, making sure every Floridian has access to public records, meetings and information throughout all levels of government in Florida.

This month we celebrate Sunshine Week, March 16-22, which honors Florida's open public records laws and reminds us of their significance and importance. For me, open government is how we do business. Our democracy is dependent on the government operating in the sunshine – during Sunshine Week and every day of the year.

Charlie Crist is the 44th governor of Florida. The Commission on Open Government can be found at http://www.flgov.com/og_commission_home.