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# THE BRECHNER REPORT

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Volume 33, Number 1 ■ A monthly report of mass media law in Florida  
Published by The Brechner Center for Freedom of Information ■ College of Journalism and Communications ■ University of Florida

January 2009

## Audit shows noncompliance

TALLAHASSEE – Forty-three percent of government agencies failed to comply with the Public Records Law, according to a statewide audit.

During the Florida Society of Newspaper Editors' audit, reporters and student volunteers requested records from 163 school, administrative, and sheriff's offices in 56 of Florida's 67 counties.

The individuals asked each office to produce copies of e-mails created in preparing the 2008-09 fiscal-year budgets.

If the agencies claimed there were no e-mails on the issue, the individuals asked for the latest correspondence or written records on the budget.

The failing agencies either could not produce a reasonable record, or they required requestors to submit written requests or give their names or reasons for wanting the records.

Sheriff's departments were the worst at complying. Almost 60 percent failed.

One reporter even had her license plate run after she requested records from the Jefferson County School District.

"It's unacceptable," said Mark Tomasik, editor of Scripps Treasure Coast Newspapers and president of the FSNE, according to the *Bradenton Herald*.

"Citizens are more and more frustrated with government and how it works and when they feel they're not going to have a smooth process, it discourages them from utilizing what is their right."

The audit would normally have been conducted in March 2009 during Sunshine Week, but it was moved to October 2008 because of Gov. Charlie Crist's open-government commission's release of recommendations for the 2009 session.

Source: *Bradenton Herald, Naples Daily News, and Orlando Sentinel*

ACCESS  
RECORDS

## Illinois governor threatens paper

CHICAGO – The FBI arrested Illinois Gov. Rod R. Blagojevich and his Chief of Staff, John Harris, on federal corruption charges, in part for threatening staff at the parent company of the *Chicago Tribune*.

Among other things, Blagojevich and Harris allegedly threatened to withhold Illinois Finance Authority support from the Tribune Company in order to induce the *Chicago Tribune* to fire editorial board members who discussed the possible impeachment of Blagojevich.

The Tribune Company, which owns the Chicago Cubs, considered seeking IFA support in order to sell the Cubs and finance or sell Wrigley Field.

In a telephone conversation intercepted by the FBI, Harris allegedly informed Blagojevich that he told a Tribune Company advisor the financial issues "look like they could move ahead fine but, you know, there is a risk that all of this is going to get derailed by your

own editorial page," according to a U.S. Attorney for the Northern District of Illinois press release.

A Tribune Company financial advisor allegedly assured Harris that the Tribune would change the editorial board.

The conversations also allegedly show Blagojevich conspired to obtain personal benefits by leveraging his authority to appoint a senator to President-elect Barack Obama's recently vacated seat and obtaining campaign contributions in exchange for official actions.

Blagojevich and Harris were charged with one count of conspiracy to commit mail and wire fraud and one count of solicitation of bribery. If convicted, they face a maximum penalty of 20 years in prison for conspiracy, 10 years in prison for solicitation, and a maximum fine of \$250,000 per count.

Source: *U.S. Attorney for the Northern District of Illinois Press Release*

## Rule could limit access

PALM BEACH – A Florida Bar committee proposed a rule limiting the public's access to recordings of court proceedings.

The Commission on Trial Court Performance and Accountability's proposed rule would require judicial approval and editing before release. The public could still access transcripts for up to \$4.50 per page.

The rule's proponents say it keeps inadvertent courtroom disclosures of personal information from the public.

"These rules favor maintaining confidences over public availability," said Circuit Judge and commission member Jonathan Sjostrom, according to the *Palm Beach Post*.

Some critics fear the rule is overbroad. The new rule violates the Florida Constitution and undermines citizens' ability "to know what's going on in their own court system," said Carol LoCicero, a media lawyer and partner at Thomas & LoCicero PL in Tampa, according to *The Reporters Committee for Freedom of the Press*.

"The idea of a judge having discretion whether or not to give us a public record is of great concern," said Palm Beach County Public Defender Carey Haughwout, according to the *Post*. "This is a wholesale restriction on access to a public event."

Critics also say Florida judges will use the rule to keep regrettable behavior from being broadcast on the Internet or television.

"They don't want their public behavior memorialized," said Miami assistant public defender Tony Natale, according to the *Post*.

Source: *The Palm Beach Post and The Reporters Committee for Freedom of the Press*

## Board sued over comment time

PENSACOLA – Two residents sued the Community Maritime Park Associates, a volunteer board, for allegedly violating the Open Meetings Law by not allowing public comment. The plaintiffs are part of the Movement for Change group in Pensacola.

Byron Keesler and Leroy Boyd requested the CMPA's decisions be voided and the process restarted for about 30 meetings to allow public comment.

On Sept. 11, 2008, the Pensacola City Council voted unanimously to direct the CMPA to include an open public forum at the beginning of its meetings.

The suit says the CMPA's allotted comment period is unacceptable because

it occurs before the CMPA discusses its issues.

Further, the "public should have been heard in the decision-making from the inception," said Pensacola attorney Sharon Barnett, who represents Keesler and Boyd, according to the *Pensacola News Journal*.

"I don't know what their complaint is other than their typical ploy to sabotage the Maritime Park," said federal judge Lacey Collier, who chairs the CMPA board, according to the *Journal*. "I am convinced, having discussed these issues with attorneys all over the state that there is not, and never has been, a violation."

Source: *Pensacola News Journal*

## County attacks Sunshine Law

NASSAU COUNTY – The Nassau County Commission passed a resolution calling for the state legislature to operate under the Open Meetings Law, but some commissioners claimed the law impedes government business.

The law "penalizes local governments to the extent that it takes forever to get anything done," said Commissioner Barry Holloway, according to the *Fernandina Beach News-Leader*.

That impediment "is why the state legislature chose to exempt itself from the restrictions," said Commissioner Mike Boyle, according to the *News-Leader*.

Boyle said because commissioners cannot discuss business outside an open meeting, they have to make on-the-spot decisions or delay making decisions at all.

"The bottom line with this resolution is basically to say to the legislature, 'If you truly in your hearts believe this is a good idea, then you ought to do it yourselves,'" said Boyle, according to the *News-Leader*.

Source: *Fernandina Beach News-Leader*

## Closed meeting may violate law

WAKULLA COUNTY – The county Canvassing Board met briefly behind a closed, locked door at the supervisor's office during an elections recount.

The door was locked when members closed it to block outside noise. It was opened when a *Tallahassee Democrat* reporter sought entrance.

"We didn't try to keep anyone out," said Supervisor of Elections Sherida Crum, according to the *Democrat*.

The situation appears to have violated the Open Meetings Law, said Sunshine Law Attorney for the Office of the Attorney General Alexis Lambert. "If you wanted to sue and your attorney took this to court, it would be a pretty strong case," said Lambert, according to the *Democrat*.

The Open Meetings Law applies to any gathering of two or more members of the same board or commission to take action on public business, according to the Attorney General Office's "Government-in-the-Sunshine Manual."

Source: *Tallahassee Democrat*

## Audit finds documents in trash

CLEARWATER – A Pinellas County audit found confidential government documents are not being destroyed as required by law.

Hundreds of documents were found after the Internal Audit Division searched the trash of 13 county buildings.

The documents included personal information not intended to be public.

Among the documents were juvenile defendant and criminal victim records,

medical information, child abuse records, and patient information.

"We found a lot of documents that should have been confidential and not just put in the trash so anyone could pick them up," said county IAD director Bob Melton, according to the *Tampa Tribune*.

Although the public had access to the documents, the IAD is "not aware of any instances where that may have occurred," said Melton, according to the *Tribune*.

Source: *Tampa Tribune*

ACCESS  
RECORDS

## Google Trends raises concerns

WASHINGTON – A Google search engine utility that identifies the geographic areas where people search for the word "flu" has raised privacy concerns.

Google Flu Trends analyzes search queries to find the places where people search for the word in the hopes of determining where flu outbreaks are

likely to happen. Google then shares the data with the Centers for Disease Control and Prevention, part of the U.S. Department of Health and Human Services.

The users' search data – including Internet Protocol addresses, the data and time of the search, and a unique cookie ID – are stored on Google's servers.

Although Google said it will make the data anonymous, technical experts say Google's technique may be ineffective. Google retains the majority of the user's IP address, and the unique cookie ID could be used to identify individual users.

Google maintains its data analyses were two weeks faster than the traditional analysis by the CDC.

In a letter, the Electronic Privacy Information Center warned Google that linking searches to individuals is historically dangerous and can lead to abuse.

EPIC also requested Google publish its privacy protection techniques.

Source: *Electronic Privacy Information Center*

PRIVACY

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# THE BRECHNER CENTER

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## 2008 FREEDOM OF INFORMATION REPORT

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### Florida Supreme Court rejects false light tort

TALLAHASSEE – Florida does not recognize false light invasion of privacy claims, according to a November 2008 Florida Supreme Court decision.

In a duo of cases, the Court held because aggrieved individuals can sue under libel and defamation laws, false light claims are superfluous.

In a case against Jews for Jesus, Inc., the court issued a 37-page opinion saying false light could potentially chill free speech.

“Because the benefit of recognizing the tort, which only offers a distinct remedy in relatively few unique situations, is

outweighed by the danger of unreasonably impeding constitutionally protected speech, we decline to recognize a cause of action for false light invasion of privacy,” wrote Justice Barbara Pariente.

Edith Rapp, the stepmother of a Jews for Jesus employee, sued the group after it published an article claiming she was affiliated with it.

A separate ruling upheld a lower court’s decision to throw out a case against the *Pensacola News Journal*. Contractor Joe Anderson sued after the *Journal* published a story allegedly implying he murdered his wife, whom he shot unintentionally while hunting. Authorities ruled the shooting

was accidental. Anderson was awarded \$18 million by the lower court.

“Today the Court shut the courthouse door to every Floridian who is falsely accused by a newspaper when they publish words that are literally true but carefully crafted to include thinly veiled accusations of wrongful conduct,” said Anderson, according to the *Journal*.

“It’s a big deal to everybody in the media, not only a victory for us,” said *Journal* President and Publisher Kevin Doyle, according to the *Journal*.

Source: *Pensacola News Journal* and *The Reporters Committee for Freedom of the Press*

#### PRIVACY

### Attorneys general support federal shield law

WASHINGTON – Forty-one attorneys general, including Florida Attorney General Bill McCollum, urged U.S. senators to support an act creating a qualified federal shield law.

The Free Flow of Information Act gives journalists a qualified privilege from disclosing sources to federal prosecutors, defense attorneys, and civil litigants.

In a letter, the attorneys general explained the FFIA would extend under federal law the same protection already provided in the laws of 49 states and the District of Columbia.

The “lack of a corresponding federal reporter’s privilege law frustrates the purposes of the state recognized privileges and undercuts the benefit to the public that the states have sought to bestow through their shield laws,” said the letter.

The public must “have access to information pertaining to their government to hold it accountable,” said McCollum in a statement obtained by the *St. Petersburg Times*. “Often it is members of the

media who provide that information, and this proposed legislation would protect journalists who are attempting to preserve that freedom.”

The FFIA, stalled in the Senate because it was not scheduled for a full vote,

passed the Senate Judiciary Committee by a 15-4 vote.

The U.S. Justice Department objected that the FFIA would interfere with law enforcement.

Source: *St. Petersburg Times* and *The Reporters Committee for Freedom of the Press*

#### REPORTER’S PRIVILEGE

### Supreme Court upholds pornography law

WASHINGTON – The Supreme Court ruled that offering or seeking child pornography is a federal crime, even where no such pornography exists.

*U.S. v. Williams*, a 7-2 decision, upheld the 2003 PROTECT Act and said the material is not free speech.

Justice Antonin Scalia wrote that “offers to provide or requests to obtain child pornography are categorically

excluded from the First Amendment.”

The law applies to simulated “sexually explicit conduct” where the actors involved are real children, and the “portrayal must cause a reasonable viewer to believe that the actors actually engaged in that conduct.”

One critic feared prosecutors could still use the law to punish innocent people. Such use would put people “through a terrible ordeal,” said

#### FIRST AMENDMENT

National Coalition Against Censorship executive director Joan Bertin, according to the *Pensacola News-Journal*.

“Perhaps I am wrong, but without some demonstration that juries have been rendering exploitation of children unpunishable, there is no excuse for cutting back on the First Amendment,” said Justice David Souter, joined by Justice Ruth Bader Ginsburg, in dissent.

Source: *The Palm Beach Post* and the *Pensacola News-Journal*



## Attorney general issues opinions on access

TALLAHASSEE – Attorney General Bill McCollum issued opinions in 2008 on open government issues ranging from city council members participating on private Web sites to the release of emergency medical services records.

### **Relocating meetings temporarily:**

May a city council temporarily relocate its chambers for public meetings in an adjacent municipality while a new city hall is being built? If not, could the city council enact an ordinance for a referendum to amend the city charter to allow the city council to meet in an adjacent municipality?

**AGO 2008-01:** Based on the

Florida Constitution and Florida statutes, the city council would be required to seek legislative authorization to hold the meetings extraterritorially. The city council cannot grant itself extraterritorial authority through local legislative action.

**Private websites:** What are the guidelines for city council members maintaining and contributing to a privately-owned Web site for citizen discussion of local political issues?

**AGO 2008-07:** City council members can post comments on a private electronic bulletin board or blog, and they can also serve as webmasters of those sites. However, board or commission members cannot use Web site blogs or message boards to exchange information about issues that could foreseeably come before the board. Any electronic materials created or received regarding the transaction of public business are subject to the Public Records Law, whether they are made on public or private computers. A city council member's postings and e-mails regarding his public duties would also be subject to the Public Records Law. The city council member who creates and posts the comments on the website has control over the records and must ensure he maintains them in accordance with the Public Records Law.

**Closed sessions:** May the Board of Commissioners for the Health Care District of Palm Beach County enter into closed attorney-client sessions to discuss settlement negotiations and litigation expenditure strategies where the Health

Care District is not a named party but a non-profit holding company it created is?

**AGO 2008-17:** Because the district is a real party in interest in the litigation, it can hold private meetings for settlement negotiations or litigation expenditure strategy sessions. Any action to approve the settlement or expenditures must be voted on in a public meeting.

**Police academy:** Is a police academy composed of citizens for the purpose of involving citizens in the functions of the police department subject to the Open Meetings Law if two or more elected officials enroll and attend?

**AGO 2008-18:** The citizen police academy is not subject to the Open Meetings Law when two or more elected officials participate. However, if more than one city council member attends the classes or programs at the academy, the council members cannot engage in discussion or debate about police department functions.

**Patient records:** Can an emergency medical services transportation licensee release records of emergency calls, which include the patient's name, address, and medical information, to a local law enforcement agency that does not have regulatory or supervisory responsibility over the licensee?

**AGO 2008-20:** The emergency medical services licensee can release the records. Florida statute 401.30(4) does not limit the release of information to only those agencies with regulatory or supervisory authority.

**Patrol trip sheets:** Are patrol trip sheets and the information on the sheets – the officer, the location and hours he or she works, and the locations to which the officer responded for emergency or non-emergency reasons – exempt from public disclosure?

**AGO 2008-23:** Patrol trip sheets are not generally exempt from disclosure because they do not reveal surveillance techniques, surveillance procedures, or surveillance personnel. Entries on the patrol trip sheets revealing such confidential information would be exempt from disclosure and may be redacted before disclosure.

**School board records:** Must the school board disclose information exempt from public inspection and copying to certified bargaining representatives in a defined "bargaining unit"?

**AGO 2008-24:** The school board need not disclose to the certified bargaining representatives exempt information such as home addresses and other protected personnel information of the spouses of law enforcement personnel employed by the school board.

**Property Appraiser records:** Must the Property Appraiser provide a list of the names of individuals who have made written requests for protection of their personal information and whose home addresses are exempt from public records disclosure?

**AGO 2008-29:** The Property Appraiser must provide a copy of any list it maintains of the names of individuals whose home address is exempt from disclosure under the Public Records Law. The list must be provided in the format in which it is ordinarily maintained. However, the public records custodian does not have to reformat any records to comply with a request.

**Correctional officers:** Is a list of law enforcement officers placed on administrative duty subject to inspection or copying, or is the information on the list confidential, if it identifies the officers who are subjects of an internal investigation?

**AGO 2008-33:** Public records identifying correctional officers placed on administrative duty are not confidential and are subject to inspection and copying. They do not constitute exempt complaints filed against an officer or information obtained pursuant to the investigation of such a complaint.

**Meetings in a private home:** Does holding public meetings in a private home violate the Open Meetings Law?

**Informal:** Agencies should avoid meeting in places not easily accessible to the public. The choice of location also must not chill the public's willingness to attend. The meeting facility must be large enough to accommodate the number of members of the public reasonably expected to attend. If the largest available room cannot accommodate all expected to attend, using video technology may be appropriate. The meeting location

## ATTORNEY GENERAL OPINIONS

## Access statutes receive additional exemptions

TALLAHASSEE – The following five bills enacted during the 2008 legislative session create new exemptions or expand existing exemptions to the state Public Records and Open Meetings laws. The bills become law unless vetoed by Gov. Charlie Crist. Copies of the legislation are available at the Florida Legislature’s Web site ([www.leg.state.fl.us](http://www.leg.state.fl.us)). Chief sponsors of the bills are in parentheses at the end of the summaries. SB=Senate Bill; HB=House Bill; CS = Committee Substitute.

### CS/SB 766 Exemption/Judicial and Administrative Officials:

Amends s. 119.071, F.S., creating a public record exemption for home addresses and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers, and the home addresses, telephone numbers, places of employment, and/or schools and daycare facilities of the spouses and children of these officials, if the official provides a written statement that he has made reasonable efforts to protect the information from

being accessible by the public. (Rich, D-Sunrise) Approved by Gov. Crist May 28.

**CS/HB 863 Exemption/Direct-Support Organization/DVA:** Amends s. 292.055, F.S., creating a public records exemption for the identities of, and information about, certain donors and prospective donors to the direct-support organization of the Department of Veterans’ Affairs, including those parts of direct-support organization meetings during which the donors’ or potential donors’ identities are discussed. (Reagan, R-Sarasota) Approved by Gov. Crist May 28.

**CS/HB 1141 Exemption/Sexual Violence Victim:** Amends s. 741.313, F.S., expanding exemption to include certain records and time sheets documenting leave due to acts of sexual violence, submitted to an agency by an employee who is the victim. (Jenne, D-Davie) Approved by Gov. Crist July 2.

### CS/SB 2610 Exemption/Organ

**& Tissue Donor Registry:** Creates exemption for donor-identifying information in the organ and tissue donor registry. Allows disclosure under certain circumstances to organ, tissue, and eye procurement agencies certified by the Agency for Health Care Administration or persons conducting research. (Oelrich, R-Gainesville) Approved by Gov. Crist June 23.

**HB 7033 Exemption/Complaint of Discrimination:** Amends s. 119.0711(1), F.S., expanding exemption for complaints and other records about discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring preferences, position classifications, salary, benefits, discipline, discharge, employee performance, evaluations, or other related activities, to any governmental agency as defined in ch. 119, F.S., until a finding is made regarding probable cause, the investigation about the complaint becomes inactive, or the complaint or record is made part of the official record of any hearing or court proceeding. (H. Government Efficiency & Accountability Council and Gardiner, R-Orlando) Approved by Gov. Crist June 10.

## LEGISLATIVE SESSION REPORT

## AG OPINIONS CONTINUED

also must be accessible to the physically disabled.

**Law enforcement officer exemption:** Who may disclose information about the identity of a law enforcement officer?

**Informal:** Certain information about a law enforcement officer and his or her spouse and children typically is exempt from disclosure. Agencies may release an officer’s name, but information such as his or her home address or telephone number is exempt. However, the exemption only applies to records held by a public agency or private entity acting on behalf of a public agency. Private companies may release information about law enforcement officers unless they are acting on behalf of a public agency.

**Health plan records:** Does the Public Records Law preclude releasing health insurance plan information identifying school district employees and their dependents?

**Informal:** Information about an insurance plan participant’s medical condition is exempt from disclosure. However, the participant’s name, address, age and other non-medical information should be disclosed. If there is doubt, the Public Records Law should be resolved in favor of access.

**Value adjustment boards:** Does the Open Meetings Law apply to orientations given by county officials for special magistrates hired to hear value adjustment board petitions?

**AGO 2008-63:** The Open Meetings Law does not apply to training sessions for special magistrates hired to hear value adjustment board petitions because there is no meeting of a board or commission at which official business will be conducted. Nothing precludes the county from allowing the public to attend the orientations, however.

Source: [myfloridalegal.com](http://myfloridalegal.com)

## Newspaper recoups fees

FORT LAUDERDALE – The Federal Emergency Management Agency will pay 75 percent of the *South Florida Sun-Sentinel’s* attorney fees

## COURTS

following a legal battle for the identities of disaster-aid recipients of the 2004 Florida hurricane season.

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*

## House and Senate approve bill

TALLAHASSEE – Committees in both the Florida House and Senate passed separate versions of a bill to increase access to records of the Department of Children and Family Services.

Both bills passed without debate and with virtually no questions, according to the *Pensacola News Journal*.

The bills propose making it possible for children and adults who have been through DCF's child care system to obtain their own records from the agency.

Many DCF records are confidential and

often contain sensitive medical histories, but the blanket rule also prohibits people from accessing their own records.

"When I found out people could not even get their own records from DCF, I couldn't believe it," said Sen. Paula Dockery, R-Lakeland, according to the *Pensacola News Journal*.

Dockery sponsored the Senate Bill, SB 2762, and Rep. Will Weatherford, R-Wesley Chapel, sponsored the House Bill, HB 1467.

Source: *Pensacola News Journal*

## Doctors' records made public

TALLAHASSEE – Patients have a right to check records on past mistakes made by their doctors and hospitals regardless of when the files were created, the Florida Supreme Court ruled.

In a 4-3 opinion, the justices rejected the hospitals' argument that patients only have the right to inspect such records created since November 2004, when voters adopted a "patient's right to know" amendment.

The Court also held unconstitutional parts of a law that aim to restrict access to records created before the amendment's adoption.

The majority opinion held the amendment applied to existing and future records because it refers to "any" records

and "any" adverse medical incidents.

Florida Justice Association President Frank Petosa said the Court's decision reflected the voters' intent. "[Medical mistakes] should not be swept under the rug in a cloud of secrecy," Petosa said, according to the *Charlotte Sun*.

In dissent, Justice Charles Wells wrote the majority's view "is contrary to the law and fundamental fairness."

Wells cited another state law keeping hospital's peer review records secret and prohibiting their use in civil cases, an exemption intended to help medical personnel speak in confidence about past errors in order to prevent future mistakes.

Source: *Charlotte Sun*

## Groups sue to prevent public release of medical errors

SARASOTA – Florida doctors and hospitals sued three state agencies in federal court to keep records of medical errors from the public.

Thirty-seven Florida hospital groups and the Florida Medical Association sued the Department of Health, the Agency for Health Care Administration and the Attorney General's Office, saying federal medical privacy laws trump state law.

Amendment 7 to the Florida Constitution lets patients access records by any "health care facility or provider relating to any adverse medical incident."

The medical groups said the law conflicts with the 1986 federal Health Care Quality Improvement Act, which enabled hospitals to report malpractice cases and hospital privilege revocations to the National Practitioner Data Bank confidentially.

The Attorney General's Office said the HCQIA allows disclosure by parties authorized under state law.

The groups also claimed satisfying the over 400 requests already filed would be costly and time-consuming because HIPAA, the federal medical privacy law, requires removing all patient-identifying information before disclosure.

While supporters say enforcing the law will reveal mistakes hidden by doctors and insurers, the medical groups and some safety advocates say the law will discourage reporting errors and violate standing confidentiality agreements.

"We feel strongly that it is not fair to open up records that were held confidential by previous court actions over 30 years," said Bill Bell, general counsel for the Florida Hospital Association.

Source: *Sarasota Herald-Tribune*

## Records audit reveals flaws

TALLAHASSEE – In a survey released in March 2008 to coincide with Sunshine Week, the Florida First Amendment Foundation found only 50 percent of 34 state agencies passed a four-part public records test.

Volunteers from the foundation, who presented themselves as average citizens, requested the same routine record – a copy of the most recent travel reimbursement form filed by the agency's chief administrative officer.

The volunteers documented whether they were asked to give their name, present identification, provide a reason or purpose for the request or provide the request in writing – all things prohibited by Florida's Public Records Law.

Thirty-two percent of the state agencies audited had one violation, and

12 percent had two. Only the Department of Transportation had three violations.

The most common violation – requesting the record requestor's name – occurred in one-third of the state agencies. Just more than one quarter of the agencies required the request in writing. Only two agencies required that the requestor provide a reason for the request.

The only agency to fail the audit completely was Visit Florida. The agency denied the requestor access to the agency's office because of "renovations," according to the First Amendment Foundation. The requestor was unable to find anyone to talk to about her public records request.

The audit also found that the attitude of government employees toward those making public record requests has "dramatically improved," according to the foundation, which cited the efforts of Gov. Charlie Crist and his Office of Open Government to facilitate transparency.

Source: *The Ledger (Lakeland)*



## DOJ releases FOIA guidance

WASHINGTON – The Department of Justice released guidance on Freedom of Information Act changes that took effect at the end of 2008.

One provision gives agencies 20 working days to process FOIA requests, or they will forfeit search and copying costs. Absent “unusual” or “exceptional” circumstances, agencies can pause the 20 days once to ask the requestor for clarification and settle any fee questions they might have.

“Unusual” circumstances include the need to gather documents from multiple field agencies, dealing with a “voluminous amount of records,” or needing to consult with other agencies to fulfill the FOIA request.

“Exceptional” circumstances are more likely to cause disruptions. However, agencies cannot claim “exceptional” circumstances if they are handling a predictable amount of requests unless that agency can show “reasonable progress” in reducing its backlog.

All agencies must now use a tracking number system for requests that cannot be filled within 10 days. Requestors must have access to the number to call the agency or check the status of the request online.

The agencies must now predict a date when the request will be fulfilled, according to the Justice Department.

*Source: The Reporters Committee for Freedom of the Press*

## Court orders DOJ to release wiretapping memoranda

WASHINGTON – A federal court ordered the U.S. Department of Justice to turn over 10 Office of Legal Counsel memoranda relating to President Bush’s domestic surveillance program.

The Electronic Privacy Information Center, American Civil Liberties Union, and National Security Archive filed a lawsuit to obtain the documents in 2005 after the DOJ denied their Freedom of Information Act request.

The organizations sought documents regarding the Bush Administration’s

former policy of conducting domestic surveillance without prior approval by the Foreign Intelligence Surveillance Court.

The U.S. District Court for the District of Columbia will review the documents in private.

Judge Henry H. Kennedy’s ruling in the nearly three-year-old FOIA suit also kept 20 documents from the public permanently because the documents threaten national security.

*Source: The Reporters Committee for Freedom of the Press*

## NARA updates records system

WASHINGTON – The National Archives and Records Administration is preparing to receive numerous documents and electronic records from President Bush’s administration in January 2009.

Among the documents are an estimated 4,200 pages from the 9/11 Commission.

Archives staff members informed the Public Interest Declassification Board that the Archives is preparing an electronic records management system for receipt.

The Archives also anticipates President-elect Obama may make changes to the current declassification order.

*Source: The Reporters Committee for Freedom of the Press*

## CIA to reverse revocation

WASHINGTON – A federal judge ordered the CIA to treat the National Security Archive as a member of the news media – and thus receive fee waivers granted to all news media members for Freedom of Information Act requests.

The CIA revoked the NSA’s status as a news media member in 2005.

The CIA said it erred in revoking the status and would fix the issue but did not.

The CIA’s conduct was illegal, and its “extraordinary misbehavior can no longer insulate it from accountability,” wrote U.S. District Judge Gladys Kessler. “The CIA’s requests that the Court not enter a formal order to this effect – after twice making misrepresentations about its intentions is truly hard to take seriously.”

*Source: The Reporters Committee for Freedom of the Press*

## Student sues over retaliation

PEMBROKE PINES – A recent graduate sued the Pembroke Pines Charter High School principal for violating her First Amendment rights by suspending her for comments she made on the Internet.

In a lawsuit on behalf of former student Katherine Evans, the American Civil Liberties Union said principal Peter Bayer violated “the free and unfettered exchange of ideas and opinions in the public arena.”

In November 2007, Evans left a comment on her Facebook page calling her Advanced Placement English teacher

**FIRST AMENDMENT** “the worst teacher I’ve ever met.” Evans

encouraged her friends to express similar “feelings of hatred,” but only three left comments, all praising the teacher. Two days later, Evans removed her comment.

Bayer suspended Evans for three days for “bullying and cyber bullying harassment towards a staff member.”

Evans was removed from AP classes and put in lesser-weighted honors courses.

Evans seeks to have the suspension removed from her academic record, according to the *Miami Herald*.

*Source: The Miami Herald*

### THE BRECHNER REPORT

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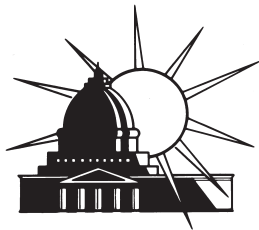
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The Brechner Report is published 12 times a year under the auspices of the University of Florida Foundation. The Brechner Report is a joint effort of The Brechner Center for Freedom of Information, the University of Florida College of Journalism and Communications, the Florida Press Association, the Florida Association of Broadcasters, the Florida Society of Newspaper Editors and the Joseph L. Brechner Endowment.

# THE BRECHNER REPORT

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Gainesville, FL 32611

January 2009



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FLORIDA

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Permit No. 94  
Gainesville, FL

## Electronic access: The information superhighway?

When I was first elected Manatee County Clerk of Circuit Court and Comptroller over 30 years ago, we were travelling down an “unpaved dirt road” – definitely not a superhighway.

We have come a long way with some dips and curves in the road and a few traffic jams, but Manatee County is close to paving the way for electronic access to all Florida courts.

In 1994, we experimented with public access via the Internet in our official records division, where mortgages, deeds, judgments, and almost anything that affects real property are recorded. The experiment was a success. It reduced courthouse foot traffic by almost 60% and costs by almost as much as well.

In 2001, we began providing free Internet access to public court dockets and images, and the reaction was overwhelmingly positive. People no longer had to come to the courthouse to check records. Attorneys and title searchers could do their research from their office or home, saving their clients the cost of courthouse travel. Homeowners could check whether their contractor had been sued. My administrative assistant even avoided a bad date because she was able to look him up and discover the prospective date had a criminal history.

The fear of terrorism and identity theft after September 11th caused the Florida Legislature and Supreme Court to take action to limit access to sensitive information. The legislature acted first, enacting laws prohibiting public Internet access to court images of family and probate cases and requiring clerks to redact Social Security and bank numbers from records when requested and, after January 2011, without request. The Supreme Court entered a moratorium on electronic access to court records, prohibiting any public electronic access to court images while the issue was being studied.

After a series of public hearings on electronic access and seeing the process stuck in a quagmire of issues, I wrote then-Chief Justice Pariente and asked the Court to permit Manatee County to be a pilot program. After I appeared before the Supreme Court on several occasions, the Court then entered an



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Order approving my request and created a Committee to review not only the pilot but also the Court’s access rules.

There are over 1,000 confidentiality provisions in Florida law. Some provisions apply to court records, some do not, and sometimes it depends on the user who wants access.

For example, in juvenile cases, the law allows access only by parties, their attorneys, the Department of Children and Families and law enforcement. We created different classes of users and then assigned separate security levels to each class. In an effort to clarify which

exemptions apply to court records, the committee on access has been working on revisions of the Court’s public records rules to define those confidential records which the clerks will have an affirmative duty to protect and those records for which the filer will be responsible.

Our job then became figuring out a way to make the information public while preventing the release of private and sensitive information. We accomplished this by requiring a subscription and developing a security matrix program that combined the user level with the type of case and type of document thus determining whether a record was viewable or not. This was step one of the pilot.

Our next step – part two of the pilot – is to make this information available to the non-subscribing public. To do this, we have had to employ an advanced redaction technology that searches the images to remove the personal numbers and, on especially sensitive documents, presents them to a clerk for review. This class of document is called “viewable on request.” Once sanitized, it can then be released to the public.

The pilot so far has been a huge success. Nearly 3,000 users have accessed over 400,000 court images. Our readers and users tell us the program has improved the accountability of the court system, heightened their awareness of what records are confidential, and encouraged them to be proactive about ensuring that personal information is protected in court records.

Hopefully this will begin Florida’s smooth cruise down the “information superhighway.”

R.B. “Chips” Shore is the Manatee County Clerk of the Circuit Court and Comptroller.