
THE BRECHNER REPORT

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Survey finds states lag in online public records

WASHINGTON – A nationwide survey of state government information available online found that “some of the most important information is being left offline,” according to *Sunshine Week*, a national initiative led by members of the news media to bring attention to open government issues.

Surveyors in every state looked at the

availability of 20 types of public records including death certificates, teacher certifications, school building inspections and gas pump overcharges. The teams

rated the records on usability, including if the information was clearly linked and whether the information was free to download.

Texas was the top rated state with records available online in all 20 categories. The survey found Florida had

14 of the 20 categories of records online. Mississippi was rated the lowest with only four of the 20 types of records available online.

The records most frequently found online were statewide school test scores available in all states and Department of Transportation projects and contracts available in 48 states. Death certificates, available in five states, were the least likely to be found online.

Source: www.sunshineweek.org

AG gives guidance on FOIA

WASHINGTON – Attorney General Eric Holder issued a memorandum guiding federal agencies on how to interpret the Freedom of Information Act.

Holder’s memo reinforces the presumption of disclosure asserted by President Barack Obama on his first day in office.

In the memo, Holder stated that the Department of Justice will only defend denials if the agency finds a foreseeable risk to an interest protected by an exemption under FOIA. Additionally, Holder stated that agencies should proactively post information online even

without FOIA requests for it.

The memo also called for the policy to be applied to pending litigation “where there is a substantial likelihood that application of the guidance would result in a material disclosure of additional information,” according to the *National Security Archive*.

“The new Attorney General guidelines read as if there is a new show in town and for the first time in eight years everyone is welcome to come see it,” said Meredith Fuchs, general counsel for the archive.

Source: *National Security Archive*

Libel tourism bill introduced

WASHINGTON – Sen. Arlen Specter, R-Pa., and Sen. Joseph Lieberman, I-Conn., reintroduced a “libel tourism” bill that would prevent U.S. courts from recognizing libel judgments

“that are deemed repugnant to the First Amendment,” according to *The Reporters Committee for Freedom of the Press*.

The Free Speech Protection Act of 2009, bill S. 449, also allows defendants who have been sued for libel in other countries to countersue in the U.S.

Rep. Peter King, R-NY, introduced the

LIBEL

bill, H.R. 1304, in the House.

The bills have been introduced as a response to a defamation judgment against New York-based author Rachel Ehrenfeld, who was sued in a British court by one of the subjects in her 2003 book *Funding Evil: How Terrorism is Financed and How to Stop It*, according to the *RCFP*.

New York has also enacted a law that prevents state courts from recognizing libel judgments of foreign courts that are contrary to the First Amendment.

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

School board can ban book

MIAMI – The 11th U.S. Circuit Court of Appeals ruled 2-1 that the school board was not infringing on freedom of speech by removing a book from library shelves that parents complained depicted a one-sided view of daily life in Cuba.

The book, “Vamos a Cuba,” and the English version “A Visit to Cuba,”

by Alta Schreier depicts smiling children

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in communist uniforms celebrating Cuba’s 1959 revolution. In 2006, a parent, who had been a political prisoner in Cuba, complained about the book because it did not discuss the lack of civil liberties on the island, according to *The Associated Press*.

Howard Simon, executive director of the ACLU of Florida, called the decision censorship and promised “further legal action to prevent the shelves of Miami-Dade school libraries from being scrubbed of books that some people find to have an objectionable view point,” according to the *AP*.

Source: *The Associated Press*

CENSORSHIP

Proposed bill could exempt crime scene photos

TALLAHASSEE – State Representative Kelli Stargel, R-Lakeland, is sponsoring a bill that would limit access to crime scene photos and videos now available under the Florida Public Records Law.

Polk County Sheriff Grady Judd got Stargel to sponsor the bill that would limit access to images of the dead or of severed extremities or images of

someone's injuries. Immediate access to the crime scene photos would be limited to families of the victims. Members of the media and others could access the photos only after judicial review.

Judd said he is sponsoring the legislation because he has heard of someone trying to obtain crime scene images around the state and is concerned they might be posted online, according to

the *St. Petersburg Times*.

"People who abuse government records are a small minority," said media attorney Carol LoCicero, according to *The St. Petersburg Times*. "The abuse should be punished. Access shouldn't be shut down."

State Sen. Charlie Dean, R-Inverness, is sponsoring the bill in the Senate.

Source: *St. Petersburg Times*

18-year ban on pictures of military coffins lifted

WASHINGTON – Defense Secretary Robert M. Gates approved modifying an 18-year ban on photographs and videos of flag-draped caskets of military personnel killed in war.

The ban, put in place in 1991 during the Persian Gulf War, prohibited photographs and videos of the "dignified transfer of remains" ceremony performed when caskets arrive at Dover Air Force Base, Del., the only point of entry for the

remains into the U.S.

Under the new policy, the news media will be allowed to document the transfer of remains at Dover and other transfer points so long as the families of the dead agree, Gates said, according to *The Reporters Committee for Freedom of the Press*.

The change is part of President Barack Obama's move toward a more transparent government, according to

The Washington Post.

The ban has been lifted on several occasions including in October 2000 by President Bill Clinton during the arrival of military personnel killed in the bombing of the USS Cole and in September 2001 during the transfer of victims of the attack on the Pentagon, according to the *Post*.

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

FOI Web site launched

TALLAHASSEE – Attorney General Bill McCollum unveiled MyFLSunshine.com, a Web site

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designed to provide training on the requirements of and compliance with Florida's public records and open meetings laws.

The Web site contains five training videos, a searchable database of attorney general opinions related to open government and a list of frequently asked questions about public records and open meetings.

The site also contains information about the Attorney General's mediation program.

"MyFLSunshine.com will be the guidebook for operating in the sunshine, and I urge our public entities to make use of this resource," McCollum said, according to his office.

Source: <http://www.myfloridalegal.com>

ACCESS MEETINGS

Teamsters sue school district

COLLIER COUNTY – A judge denied the school district's motion to dismiss a lawsuit alleging county school board members violated the Sunshine Law in the firing of one superintendent and the hiring of another in July 2007.

Teamsters Local 79 and Collier County school bus driver Charlotte Locke filed the suit seeking to void the school board's action approving the contract with Dennis Thompson, who became superintendent of the school district after then Superintendent Ray Baker was fired.

Just a few weeks earlier, the board voted 3-2 to fire Baker. At that same

meeting, board members voted to begin discussing the position with Thompson. No other candidates were interviewed, according to the *Naples Daily News*.

In denying the motion, the judge said nothing precluded Locke from bringing the suit forward, according to the *Naples Daily News*.

The State Attorney's Office has cleared the Collier County School Board of Sunshine Law violations in the firing of Baker and hiring of Thompson finding that not enough information had been provided to begin a formal investigation.

Source: *Naples Daily News*

HOAs may be violating law

PONTE VEDRA BEACH – St. John's County Attorney Patrick McCormack warned homeowner associations (HOA) and association subcommittees in Ponte Vedra Beach that they may be violating the Sunshine Law.

McCormack spoke to HOA members at the Ponte Vedra Beach Branch Library and said that most of the local HOAs were subject to the Sunshine Law in certain situations but may not be aware of

it or of the law's requirements, according to the *Ponte Vedra Leader*.

HOA and HOA subcommittees, such as architectural review committees, are subject to the Sunshine Law if the association's approval is needed before the county issues a building permit because the HOA is playing a role in a county decision, according to McCormack.

Source: *Ponte Vedra Leader*

Post 9/11 opinions out

WASHINGTON – Nine secret legal opinions issued by Bush administration lawyers after 9/11 were disclosed publicly for the first time by the Justice Department.

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The opinions showed a broad interpretation of presidential authority asserting that the president could use the military within the U.S. to conduct raids without search warrants, among other things. The opinions were released as part of the Obama administration's push towards greater transparency.

One opinion issued Oct. 23, 2001 to Alberto Gonzalez, then White House counsel, stated that "First Amendment speech and press rights, may also be subordinated to the overriding need to wage war successfully," according to the *St. Petersburg Times*.

Earlier this year, before President George W. Bush left office, Justice Department official Stephen Bradbury issued a memo formally repudiating the opinions and stating that they had not been relied on since 2003, according to *The St. Petersburg Times*.

Source: *St. Petersburg Times*

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ACCESS RECORDS

Legislature could save e-mails

TALLAHASSEE – The state legislature could easily expand disk space to accommodate archiving e-mails of House and Senate members for up to three years, according to *The Associated Press*.

Currently, the legislature has about a terabyte of e-mail storage space, "or about the space on six Sony PlayStation 3 video game systems," according to the *AP*.

The cost of expanding space to allow for storage of e-mails for up to three years would cost the same or less than the current systems in place in the House and Senate.

The Florida legislature's policy on e-mail retention is less restrictive than other state agencies, including the governor's office which permanently archives important e-mails.

In the House, representatives can

decide if and for how long to keep e-mails. Messages in the deleted items folder are erased every 30 days and sent e-mails are deleted every 90 days, said Jill Chamberlin, spokeswoman for the House speaker, according to the *AP*.

The House's e-mail retention policy came under scrutiny when former House Speaker Ray Sansom's office said e-mails requested in connection with a \$110,000-a-year job he took at Northwest Florida State College had been deleted as part of the monthly routine to make space on the server.

The Senate does not have a deletion policy, but e-mails in mailboxes are saved nightly and deleted e-mails are saved on backup for about a month, said Jaryn Emhof, spokeswoman for the Senate president, according to the *AP*.

Source: *The Associated Press*

Tracking tax spending online

TALLAHASSEE – State Representative Dorothy L. Hukill, R-Port Orange, introduced the Track Your Taxes—Florida Budget Openness Act in the Florida House of Representatives to provide online access for the public to track how state and local tax dollars are spent across the state.

House Bill 971 would provide access to tax records through a single searchable Web site accessible through www.MyFlorida.com. The site would contain information including the date, source, and purpose of each expenditure and revenue. The site would also include any government contracts in

which tax dollars were spent.

State Senator Ronda Storms, R-Valrico, is sponsoring the bill in the Florida Senate.

In March, Gov. Charlie Crist and CFO Alex Sink unveiled the Sunshine Spending Web site which provides a searchable database of vendors receiving tax dollars. The Web site in Hukill's bill would go further by including information on all state appropriations and expenditures online. Eventually, local agencies, governmental entities and school boards would also be included, according to Adam Zurbriggen, Hukill's legislative assistant.

Source: www.myfloridahouse.gov

County attorney's notes gone

LEE COUNTY – County officials claim original notes taken by an investigator whose 13-page report led to the firing of nine county employees do not exist, according to *The News-Press*.

The News-Press and some of the fired employees filed public records requests for the notes taken by North Carolina attorney Debra Ragin Jessup when she interviewed four of the nine employees about alleged racial harassment within the facilities management department.

The Deputy County Attorney Andrea Fraser told *The News-Press* via e-mail that there was no need for Jessup to preserve her notes because her notes became the 13-page report.

Jessup was paid up to \$5,000 of taxpayer money, according to *The News-Press*.

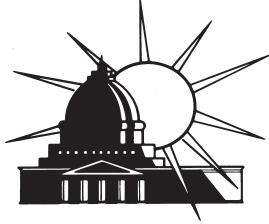
"The taxpayers paid for those (notes), and where are they?" asked Karl Harsh, one of the fired employees, according to *The News-Press*.

Source: *The News-Press*

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Final Report recommends reforms to access laws

Florida's open government laws are some of the oldest and, arguably, the best in the nation. Never in the state's history, however, have the laws been thoroughly reviewed, particularly a review aimed towards reform. Both the Public Records Law and the Sunshine Law have been amended over the years, usually in patchwork fashion, and scores of new exceptions are created every legislative session. As a result, our open government laws are rife with inconsistencies and redundancies. Also, the laws haven't kept pace with rapid advances in technology and the increasing use of personal computers and handheld communication devices are placing strains on the public records and open meetings laws. The result has been an erosion in the public's constitutional right of access to the records and meetings of its government.

The Back Page

By Barbara A. Petersen

On June 19, 2007, Gov. Charlie Crist issued Executive Order 07-107 and created the Commission on Open Government Reform for the purpose of reviewing, evaluating, and issuing recommendations regarding Florida's public records and open meetings laws, noting that "an open and accessible government is the key to establishing and maintaining the people's trust and confidence in their government." Over the next year and a half, the commission held a series of public hearings across Florida, taking testimony from scores of people on a wide variety of issues including the need for a thorough review of open government exemptions, and the creation of new exemptions and elimination of some now on the books; the cost of accessing public records; the effect of the increasing use of handheld communications devices on Florida's open meetings law; the right of access to records stored in electronic recordkeeping systems; the importance of financial transparency in government; the need for coordinated and effective enforcement mechanisms; and access to legislative records and meetings.

The commission finished its work in December and its final report, containing 42 separate recommendations, was issued in January 2009. Many of the recommendations require legislative action, but a number of others are policy recommendations that can be instituted by state agencies and local governments



Barbara A. Petersen

without legislative or gubernatorial input.

A few reflect action already taken by Gov. Crist or recommend codification of the governor's policies. For example, shortly after the Tallahassee hearing where citizens complained of poor treatment by county officials, the governor issued an executive order requiring state agencies to adopt an Open Government Bill of Rights "to guarantee that the right of access to public meetings and records is safeguarded and protected." The commission recommended

codification of the Bill of Rights as a preamble to a consolidated open government law, one that combines both the public records and open meetings requirements currently in law.

In March, Gov. Crist and Chief Financial Officer Alex Sink announced the creation of a new web site, www.flgov.com/sunshinespending, designed to help taxpayers track how state government spends tax payer dollars, a development in line with the commission's recommendation for enhanced financial transparency.

The commission also tackled the problem of the effect of advances in information technology on the Public Records Law, recommending that the Legislature adopt legal standards for new and redesigned computer systems that will work to improve public access to the public records stored in agency databases and computers, and that agencies create systems or establish policies to provide enhanced access to all public record e-mails sent or received by government officials.

The commission's work was both an historic and Herculean effort on the part of its nine members. Now the task of reforming Florida's famed open government laws is in the hands of the Legislature and our elected representatives at all levels of government. So let's remind them of this: The importance of open government – the inherent right of the people to oversee their government and hold it accountable for its actions – cannot be overstated. As Judge Damon Keith, senior judge for the 6th U.S. Circuit Court of Appeals, aptly said, "democracies die behind closed doors."

Barbara A. Petersen is president of the First Amendment Foundation and chaired the Commission on Open Government Reform.