
THE BRECHNER REPORT

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Court amends court access rules

TALLAHASSEE — After seven years of gathering research and recommendations, the Florida Supreme Court has amended its rules to respond to the push for online access to court records.

Under the new rules, a record is presumed open unless it fits into one of 19 exemptions.

Examples of the exemptions include adoption records, grand jury records, Social Security numbers and identification of sexual abuse victims.

“The list of exemptions contained in the rule is pretty short,” media attorney Carol LoCicero told the *St. Petersburg Times*. “When you put that into the context of where we started, that is fabulous.”

While clerks of court will be

responsible for independently verifying information claimed to be exempt, those who file documents will carry most of the burden of establishing confidentiality.

Non-confidential information must be redacted rather than sealing an entire record. If a party, the media or other party challenges the designation of a record as confidential, a hearing must be held within 30 days, according to the Court.

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“The goal of the comprehensive amendments is to balance the public’s constitutional right to access court records with the courts’ responsibility to protect from public access court records that are confidential,” the Court wrote in its 50-page opinion on the rule changes.

Source: St. Petersburg Times, First Amendment Center

PSC pay disclosure order reversed

TALLAHASSEE — The 1st District Court of Appeal has reversed the Public Service Commission’s (PSC) demand that utility companies release salary information, citing the potential to harm the companies’ competitive interests.

In the midst of a significant rate increase request by Florida Power & Light Co. and Progress Energy, the PSC ordered disclosure of compensation information for employees making more than \$165,000 a year. The PSC requested

positions, titles and salaries but not names.

The 1st DCA, however, interpreted the law to mean that “not limited to” could still provide confidentiality for compensation information if business interests would be harmed. In addition to concern that releasing salary information could lead to “other utility companies... stealing their employees,” the court noted concerns for “morale and infighting among employees.”

Source: Northwest Florida Daily News

Judge: City phone records of personal calls are open

NEW SMYRNA BEACH — Cell phone records that document personal calls made on public phones are public records in Florida, according to a ruling by Circuit Judge Robert Rouse.

The ruling stems from a lawsuit filed by the company behind the *New Smyrna Beach Shadow*, an online publication about area politics.

NSB Shadow filed suit in February 2009, seeking cell phone records of New Smyrna Beach Police Commander Bill Drossman. Drossman had been accused (but was cleared) of forwarding a racist e-mail.

NSB Shadow’s lawsuit stated that it wanted to compare Drossman’s cell phone records to individuals on watch lists of

Governor Crist suspends two Coral Springs commissioners

CORAL SPRINGS — Gov. Charlie Crist suspended two city commissioners after they were accused of violating the Open Meetings Law.

Coral Springs City Commission members Vincent Boccard and Tom Powers allegedly met with police union representatives at a sports bar to discuss union negotiations and a salary freeze.

Boccard and Powers deny the allegations.

ACCESS MEETINGS

Both face second-degree misdemeanor charges. Misdemeanor charges for violations of the Sunshine Law only apply when a knowing violation is alleged to have occurred. Boccard and Powers could each face up to 60 days in jail and a \$500 fine.

City officials have discussed appointing replacements for Boccard, whose term expires in November, and Powers, whose terms runs through 2012.

Source: The Miami Herald

white supremacist groups, according to the *Daytona Beach News-Journal*. After being charged more than \$350 for time city employees spent redacting information it believed was exempt from the telephone bills, Bill of Rights Inc., which operates *NSB Shadow*, filed the lawsuit.

Source: Daytona Beach News-Journal

Lawsuit challenges police department's flat fee

LAKELAND — A public records advocate has filed suit against the Lakeland Police Department, alleging that the \$23.50 fee for a one-page report violated the Public Records Law.

Lakeland resident Joel Chandler also claims the “flat fee” is unconstitutional. Chandler wants a refund, attorney’s fees and a court ruling against the practice, according to *The Ledger (Lakeland)*.

After learning of the alleged “flat

fee” practice, Chandler filed a request on Feb. 4 for all records relating to calls for service to a randomly selected address. He was given a one-page “analysis report of calls for service.”

The Florida Public Records Law allows agencies to charge up to 15 cents per page for copies and an additional “reasonable service charge based on the actual cost incurred.” The police department attributed the fee to its “crime analysis,”

according to the suit.

Last year, Chandler prevailed in a public records suit against the Polk District Court for access to information about dependents of employees who receive health care. The District spend approximately \$44,560 in that legal fight, and its attorney pleaded no contest to a misdemeanor charge of violating the Public Records Law.

Source: *The Ledger (Lakeland)*

AG: Retention rules should cover text messaging

TALLAHASSEE — Florida Attorney General Bill McCollum wants an update to the state’s rules on electronic communications in light of the prevalence of cell phone messaging. McCollum wrote a letter to Secretary Browning urging Browning to consider amending existing administrative rules on e-mail to other electronic communications, especially Blackberry PIN and SMS/text messaging.

“There are no required retention guidelines, however, for [non e-mail]

types of electronic communication because the administrative rules describe them as transitory,” McCollum wrote. “This is no longer accurate in today’s world where business is conducted on a variety of communication platforms.”

McCollum’s letter came on the heels of the third and final meeting of his Sunshine Technology Team, a fact-finding task force formed last fall. The Sunshine Technology Team was formed in response to a controversy at the Public Service Commission (PSC) involving

Blackberry PIN messages. McCollum’s office gathered industry professionals from Research in Motion (Blackberry inventors) and Microsoft in addition to government officials and access advocates to discuss how technology interacts with open government. In conjunction with his letter to the Secretary of State, McCollum also announced a new Sunshine and Public Records Law training video for government entities with Facebook or Twitter accounts.

Source: *myflsunshine.com*

Official surrenders personal computer in lawsuit

SARASOTA COUNTY — A Sarasota County Commissioner surrendered his personal computer after being sued by two citizen groups who claim he violated open government laws by not turning over at least 28 county-related e-mails from his personal e-mail address, according to the *Pelican Press (Sarasota)*.

Citizens for Responsible Government and Citizens for Sunshine (also involved in the \$775,000 attorney’s fee case against Venice last year) received more than

27,000 e-mails from Commissioner Joe Barbetta in response to their September public records request.

The groups say Barbetta failed to produce at least 28 e-mails and raised concern that even more e-mails might need to be made public. Barbetta said that he thought the request was only for e-mails related to negotiations to bring the Baltimore Orioles to the area. The groups are also suing the county and city of Sarasota over the baseball negotiations.

Barbetta voluntarily surrendered his computer prior to a hearing requested by the plaintiffs to have a judge consider freezing Barbetta’s computer. A computer forensics company scanned the hard drive and “will make a bit-by-bit image of the hard drive,” said the plaintiffs’ attorney, Andrea Mogensen.

The two sides will then negotiate how the information will be analyzed. Barbetta will have to pay for the analysis.

Source: *Pelican Press*

Paper sues Orange City for records on lieutenant

DELAND — A local weekly newspaper has filed suit against Orange City, asking a judge to order city officials to furnish public records related to a police lieutenant under investigation.

The suit, filed by the parent company of the *West Volusia Beacon*, claims the newspaper’s efforts to cover the investigation have been impeded by the city’s refusal to respond to public records requests. The *Beacon* wants a judge to order city officials to hand over public records.

The *Daytona Beach News-Journal*,

the area’s daily newspaper, reports the city has been at odds with the local news media since last November, when the *News-Journal* first obtained a complaint about the lieutenant now under investigation.

The complaint was addressed to Orange City officials, alleging temper problems and unprofessional behavior from Lt. Gregory Melvin and signed by many of the department’s police officers. The *News-Journal*’s request to inspect Melvin’s personnel file was ignored, and requests for other public records relating

to the investigation were denied by other city officials, according the *News-Journal*.

The city clerk’s office claims that in at least one instance, records had already been transferred to the city attorney.

A repeat records request by the *News-Journal* received a response from the city stating that under Florida’s Public Records Law “it is entitled to a reasonable time to review” the request. This was the same response received by the paper when it made the same request a month prior, according to the *News-Journal*.

Source: *News-Journal*

College holds new meeting due to closure

DAYTONA BEACH — Daytona State College Board of Trustees chose to re-do a previously held meeting after a complaint that the public were turned away from the public meeting.

Attendance at the Feb. 18 meeting was much higher than expected because pay raises for 900 employees were on the agenda, according to the *Daytona Beach News-Journal*.

The Board's regular meeting room has a 100-person capacity but approximately 123 people were present at the meeting. The college's safety director determined that due to fire and safety concerns, no more people should be permitted to enter the room.

Both then-Board chairperson Forough Hosseini and college President Kent Sharples said they were not aware anyone was turned away from the meeting until after it was over.

Jerry Kenney was turned away from the meeting and raised his concerns in a letter to Hosseini, which prompted the second meeting.

Source: *Daytona Beach News-Journal*

Jax council mulls Sunshine change

JACKSONVILLE — The City of Jacksonville is considering changing its Sunshine Law Compliance Act, enacted in 2007 after a grand jury investigation into alleged open meetings violations by the City Council. The proposed changes to the law would reduce required annual trainings to once every two years.

The proposed changes to the law also remove references to the City's Ethics Office and Ethics Commission. The ethics officer is currently responsible for approving off-site meetings and develops open government trainings.

The Ethics Commission was not notified of the proposed changes. City Ethics Commission Chair Kirby Oberdorfer expressed her concerns about the proposals

in an e-mail to a Council committee.

"The proposed amendment appears to be in contravention of . . . the system of essential crosschecks incorporated into the original Jacksonville Sunshine Compliance Act by the City Council to repair citizens' trust in City government," Oberdorfer wrote, according to the *Financial News & Daily Record*.

Council member Denise Lee, sponsor of the proposal, said the failure to notify the Ethics Commission was an unintentional oversight. Lee said changing the compliance act would save the city money in printing and administrative costs.

Source: *The Florida Times-Union, Financial News & Daily Record*

Station objects to use of footage

PANAMA CITY — A candidate for the Florida House of Representatives took a video clip down from his website after a state-run television station demanded the clip be removed.

David Pleat is a Democratic candidate for the District 7 representative seat in the Panhandle.

Pleat opposes oil drilling near the Gulf Coast and posted a Youtube clip of an Air Force commander discussing the potential effect of drilling on Eglin Air Force base to his own website.

The clip was taped by WFSU, a station owned by Florida State University that operates The Florida Channel.

The station contacted Pleat's campaign

and demanded the video be removed.

Florida Channel Executive Director Beth Switzer said that Florida Statute 1001.25(3)(a) prohibits the use of its material for political campaigns.

Pleat, however, did not feel that his campaign violated the law. "Our position is that we did not use their facility, plant or personnel," Pleat told *The News Herald* (Panama City). "We simply put forward information that was taped in a public hearing with public dollars."

Gov. Charlie Crist, who is running for U.S. Senate, faced accusations of copyright violation in January when he used WFSU footage on his website.

Source: *The News Herald*

Mediation for SeaWorld dispute

ORLANDO — A circuit judge has ordered mediation in the dispute over access to videos showing the death of a SeaWorld trainer. Judge Lawrence Kirkwood enjoined the release of the footage of trainer Dawn Brancheau's Feb. 24 death, which occurred when an orca pulled her underwater during a show.

The Orange County Sheriff's Office and the Medical Examiner's Office possess the footage as part of their ongoing investigations into the death. Under Florida law, the footage could be considered a public record once the investigations are complete.

Brancheau's family was joined by

SeaWorld in their fight to keep the footage private. "The potential harm to this family is incredibly severe," the family's attorney, University of Florida Professor and former state lawmaker Jon Mills said. "There's nothing you can learn from the video other than what a tragic, horrible, traumatic attack it was."

But media outlets, including the *Orlando Sentinel*, *The Tampa Tribune*, *The Ledger (Lakeland)* and WFLA-TV are seeking access to the video. Access to the videos will help provide oversight and understanding of the incident, media attorney Rachel Fugate said.

Source: *Orlando Sentinel, CNN*

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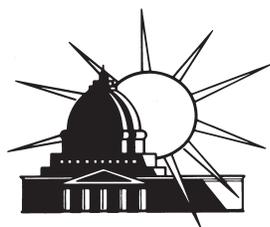
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ACCESS RECORDS

May 2010



UF UNIVERSITY of
FLORIDA

Watchdog journalism withstands changing times

The *Detroit Free Press* is honored to accept the 2009 Brechtner Center for Freedom of Information Award for our investigation of former Detroit Mayor Kwame Kilpatrick – and I was doubly honored to speak to several classes of University of Florida students during my visit to Gainesville. In my presentations, I described behind-the-scenes details of how the *Free Press* uncovered corruption and how reader response was overwhelming. The whole experience gave those of us in Detroit some firm convictions:

- * The future of professional journalists everywhere is brighter than ever, even as citizen-journalists add to the flow of information in our digital age.

- * We're going to be OK as an industry, despite our economic turbulence, if we can keep our newsrooms robust.

- * Readers will respond to great journalism on the Web, not just in the good old print newspaper.

The Back Page
By Paul Anger

We hit almost 4 million page views on the day the former mayor pleaded guilty to felonies.

- * It's the wealth of content

we provide that's important to our future, as well as all of the ways we deliver information – websites, mobile sites, e-Editions, e-Readers, print newspaper, Twitter, Facebook, text alerts and more.

We used all of them in reporting the unraveling of the mayor. The Kilpatrick saga began the night of Jan. 23, 2008, when we posted this headline on *freep.com* (and in the next day's *Free Press*): *Mayor lied under oath, text messages show.*

Jim Schaefer and M.L. Elrick revealed that Kilpatrick and aide Christine Beatty lied about an intimate relationship and about how they fired a police investigator when they testified in a police whistle-blower case that cost taxpayers more than \$9 million. The newspaper had spent more than three months reviewing and authenticating 14,000 text messages – obtained from sources – on Beatty's city-issued pager. The messages showed Kilpatrick and Beatty had lied for years – in depositions, in public, in the courtroom. We published enough text messages to show the two would be open to perjury charges, but we left out messages with graphic sex terms. We focused on issues, not sex.



Paul Anger

Within days of our first story, the county prosecutor launched an investigation that led to 15 counts against Kilpatrick and Beatty. The prosecutor said: "This investigation started ... because of a *Detroit Free Press* article. The importance of an independent press is vitally important to our society."

Through more reporting and a Freedom of Information Act lawsuit, we exposed a massive fraud – the mayor and his lawyers had concocted a deal with a lawyer who had filed the whistle-blower case. Upon learning that the cops' lawyer had obtained the damaging texts, the mayor approved a settlement in exchange for a secret agreement requiring the text messages to be destroyed.

Because of our revelations: Beatty resigned, the City Council launched efforts to oust the mayor, our FOIA lawsuit made public the details of the mayor's secret dealings, a state commission began investigating a dozen lawyers in connection with the cover-up, and Gov. Jennifer Granholm convened hearings to remove Kilpatrick. In the end, the mayor resigned, served three months in jail, gave up his law license and was ordered to pay \$1 million restitution to the city. The City of Detroit was able to move on – with a new, reform-minded mayor and city council.

We posted more than 130 videos, 8 live-streams, thousands of pages of documents on *freep.com*, almost 100 photo galleries, and more than 100,000 reader comments. We had more than 100,000 million page views.

Many readers said the work had reminded them of the role we play in our democracy. One wrote to us: "I'd like to send a donation of \$100 ... as appreciation and ... to help defray these costs that are no longer supported by advertising and sales." He had enclosed a check – and wouldn't take it back.

That letter sums up why the future of professional journalism is assured – even in a tough economy, even with the rise of citizen-journalists. We do need bloggers, we need more eyes and ears in the community, and we need people with cell phones to take pictures that can enrich our news reports. But there is nobody who does what trained journalists do – dig up credible information critical to an honest democracy.

Paul Anger is Editor and Publisher of the Detroit Free Press.