
THE BRECHNER REPORT

Volume 35, Number 6 ■ 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
June 2011

Audit: Fla. leads nation in website transparency

ALEXANDRIA, Va. – Non-profit watchdog group Sunshine Review announced the results of a national audit of government websites, showing Florida as the national leader in website transparency.

Using a 10-point checklist, the Sunshine Review ranked more than 6,000 websites. The checklist considered the ease of use of websites and the availability of information on budgets, contracts, open meetings and

**ACCESS
RECORDS**

other public information.

State and local governments who received perfect scores were given “Sunny Awards” for their transparency. Twenty-one winners were from Florida, followed by Texas with 12.

Top-rated Florida government entities were: Brevard County, Charlotte County Public Schools, Duval County, Escambia County School District, Hillsborough County Public Schools, Indian River

School District, Lake County, Marion County Public Schools, Miami, Orange County Public Schools, Osceola County School District, Palm Beach County, Palm Beach County School District, Pinellas County, Polk County School District, Putnam County, Seminole County Public Schools, St. Johns County School District, St. Lucie County School Board, Sumter County and Volusia County.

Source: Daily Commercial (Sumter County), Sunshine Review

Court: Shield law protects reporter from deposition

HOMESTEAD – The 3rd District Court of Appeal struck down a trial court’s order compelling a television reporter to testify in a deposition, citing Florida’s shield law.

The deposition was related to a suit between former Homestead City Manager Mike Shehadeh and the city for breach of an employment contract. Shehadeh wanted to depose WTVJ-NBC 6 reporter Jeff Burnside.

Burnside had reported on a diskette he received with Shehadeh’s personal text messages.

Shehadeh contended that he wanted to know how Burnside got the diskette,

whether through a public records request or a leak at the city.

The appellate court, using the three-part test established by Florida’s reporter’s privilege law, ruled that Shehadeh could not depose Burnside.

The court found that while the first element of the test to overcome the privilege was met—the information was relevant to the case—Shehadeh failed to meet the other two elements.

Specifically, he did not show that the information couldn’t be obtained from

other sources, such as the city’s public records custodian or other recipients of the diskette. Also, Shehadeh didn’t show that a compelling interest existed in questioning a reporter rather than

seeking the information from people who are not professional journalists.

“The record presented here is precisely the kind of scenario in which the assertion of the privilege should be upheld,” the court’s opinion stated.

Source: WTVJ-NBC 6 v. Shehadeh (Case no. 3D10-3438)

**SHIELD
LAW**

Teen’s attorneys want to keep cameras out of court

FORT MYERS – Lawyers for a 14-year-old boy accused of killing his parents are asking a judge to keep cameras out of the courtroom.

Alexander Crain has pleaded not guilty to two manslaughter charges for the December 2010 shooting deaths of his parents.

Crain could face up to 30 years in prison for each charge. Prosecutors are trying him as an adult.

The case is still in the early stages of prosecution, but Crain’s attorneys fear that allowing cameras at pre-trial hearings

COURTS

could negatively impact his right to a fair trial. “We believe the presence of television cameras will indeed prejudice the jury pool in the event this case goes to trial,” Brian Bieber, an attorney for Crain, said.

Some attorneys in Southwest Florida questioned whether a ban on cameras would be instituted by the judge, according to *The News-Press* (Fort Myers).

“The judge has to weigh the public’s right to know against the detrimental

effect of having cameras in the courtroom with a 14-year-old child,” longtime criminal defense attorney Michael Hornung, who is not associated with the case, said.

Florida’s laws on cameras in the courtroom are some of the most access-friendly in the nation.

The party requesting cameras be excluded must prove the camera coverage would have a substantial effect that is qualitatively different than other types of media.

Source: The News-Press (Fort Myers)

Judge: Irions doesn't have to turn over hard drive

ST. PETERSBURG – After hearing from both sides of a public records dispute, a circuit judge has declined to force the former director of the Pinellas County Housing Authority to turn over his personal hard drives.

Darrell Irions, chief executive officer of the city housing authority and former head of the Pinellas County Housing Authority, was initially given 20 days

to turn over his hard drives and the user name and password for his Yahoo e-mail account or explain why he should not have to. Circuit Judge W. Douglas Baird later decided to allow the parties to continue discovery but not to force Irions to turn over his personal computer.

The decision is part of a public records lawsuit filed by the county housing authority against the city authority over

records from the five years Irions also served as head of the county agency. The county authority hired a forensic audit company which last year reported that Irions forwarded public e-mails to his private e-mail address and deleted e-mail from the government server.

Irions denies deleting records and contends that he fulfilled records requests.

Source: St. Petersburg Times

Man sues Zephyrhills, claims book is public record

ZEPHYRHILLS – A man is suing the city over the book *Zephyrhills A to Z*, claiming the city is overcharging for what he considers a public record. The book, a collection of microfilm, family histories, interviews and newspaper clippings compiled over a decade by city workers, is available for \$29.95 plus tax.

Robert Chandler, who was interested

in purchasing the book for his mother, a longtime resident of Zephyrhills, thinks that \$29.95 plus tax is an illegal charge for public records. The Public Records Law allows reasonable charges for records.

“The taxpayers have already paid for this book,” Chandler said. “The book’s just the format. They’re profiting from the production of a public record and charging

sales tax.” Chandler calculated the city’s cost at \$23.74 per book.

City Manager Steve Spina acknowledged that the printing cost was \$17.89 per book. “I don’t even mind lowering the price,” Spina, who said he considered the book more of a public service than a public record, said.

Source: St. Petersburg Times

Official faces records charges

DEERFIELD BEACH – A Deerfield Beach commissioner is facing five counts of falsifying public records for failing to properly disclose a conflict of interest. Sylvia Poitier is accused of failing to properly reveal a financial relationship between herself, her brother and a nonprofit association that handles low-income housing funds for the city.

Poitier, on behalf of the housing

nonprofit, allegedly solicited her brother for a loan to purchase tax certificates on delinquent properties owned by the nonprofit. Her brother was reportedly to receive 10 percent interest from the nonprofit for the loan.

The charges are first-degree misdemeanors, each punishable by up to a year in jail and a \$1,000 fine.

Source: South Florida Business Journal

Hillsborough County seeks more uniform records policy

TAMPA – Hoping to make public records practices more uniform across the county, Hillsborough County commissioners unanimously approved recommendations by a public records design team.

The team was led by county Tax Collector Doug Belden and its goal is to develop a “systematic, legally compliant, transparent and consistent process” for responding to records requests.

The problems that prompted the recommendations were based in part on a countywide survey of agencies about their processes for records requests. “Fees varied widely,” Jennifer Castro, Belden’s executive administrator, said. “Some agencies had manual logging,

some tracked some things, other things not. There were also different ideas about what were public records.”

After nearly a year of research, the team issued recommendations for more consistent practices, including training a records custodian and alternate for each department, adopting a single fee structure, spelling out when an attorney has to review a request and mandating that nearly all requests be logged into a countywide computer system.

Belden said the recommendations should be implemented in six months.

If the system is successful, Belden said it could be a basis for statewide policy.

Source: The Tampa Tribune

ACLU sues for school records

COLLIER COUNTY – The American Civil Liberties Union (ACLU) is suing the Collier County School Board for records related to a 2009 “Kick-a-Jew-Day” incident at a middle school.

The ACLU alleges the school board failed to comply with repeated requests for public records related to the incident involving 10 middle school students who imitated an episode of the television show “South Park.” The “South Park” episode featured a satire on bigotry where elementary school students held a “Kick a Ginger Day” and kicked red-haired students. The Collier students were punished with one day of in-school suspension.

Documents were provided in response to the ACLU’s request for records related to the incident, but they didn’t contain a description of what occurred. The ACLU then requested that the students’ disciplinary records be produced with identifying information removed. The school district declined to produce the redacted disciplinary records, citing the federal student privacy law, the Family Educational Rights and Privacy Act (FERPA).

Source: Naples News

Officials balk at private meetings

BROOKSVILLE – Meetings between individual Hernando County Commissioners and constitutional officers to discuss next year’s budget were canceled after the commissioners balked at the idea of conducting public business in private.

The meetings were to take place at an attorney’s office. While a meeting of one commissioner and five elected constitutional officers would not technically be a violation of the Sunshine Law, there could be a problem if the constitutional officers passed a commissioner’s comments to another, Florida First Amendment Foundation Director Jim Rhea said.

The meetings were requested by the constitutional officers after the county administrator sent a memo stating that a \$5 million budget shortage would need to be split among constitutional officers and county departments.

“There is nothing that we would discuss in private that would not be appropriate to discuss in a public setting,” Commissioner Dave Russell said. “In the spirit of openness and transparency, the public should be involved in these talks.”

Source: *St. Petersburg Times*

ACCESS MEETINGS

New site tracks FOIA lawsuits

SYRACUSE, N.Y. – A new website will track the status of Freedom of Information Act (FOIA) lawsuits nationwide. The site, FOIAproject.org, was launched by the Transactional Records Access Clearinghouse (TRAC) at Syracuse University.

The website was prompted by TRAC’s own problems with FOIA lawsuits. Some

features of the site include a geographic view of FOIA suits with links to filings in the cases. The court filings are updated daily.

Future tools might allow visitors to see trends in suits, agency-specific breakdowns and possibly a forum for users to add personal experiences with FOIA denials.

Source: *RCFP.org*

PETA sues for circus records

WASHINGTON – People for the Ethical Treatment of Animals (PETA) is suing the U.S. Department of Agriculture (USDA) over records related to the deaths of two circus animals and the beating of another.

PETA alleges that the USDA is improperly withholding records related to the government’s investigation of the incidents. In the Freedom of Information Act lawsuit, PETA describes three cases involving Ringling Bros. and Barnum &

Bailey Circus.

The USDA investigated the cases, which included the deaths of a lion and an elephant and the beating of another young elephant, but did not take any enforcement action. The USDA is responsible for enforcing the Animal Welfare Act.

PETA wants the USDA to hand over records it contends are not covered by the exemptions cited by the USDA, including the personal privacy exemption.

Source: *Courthouse News Service*

iPhone privacy case filed in Tampa

TAMPA – The controversy over Apple iPhones tracking users’ locations could be decided in Tampa. A lawsuit was filed in federal court in seeking to create a class-action suit and names two Apple customers—Vikram Ajampur of Tampa and William Devito of New York.

The suit alleges violation of privacy and violation of state and federal laws. Apple iPhones track customer locations for reasons such as helping customers find lost phones and allowing customers

to use location-based maps and restaurant recommendations.

However, some security consultants contend that Apple iPhones and iPads keep logs of customer locations even if the tracking function is turned off. The suit alleges that Apple is

collecting highly personal data without customer consent and benefitting from the value of the information.

The suit is pending in the U.S. District Court for the Middle District of Florida.

Source: *The Tampa Tribune*

PRIVACY

THE BRECHNER REPORT

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

Sandra F. Chance, J.D., Exec. Director/Exec. Editor
Christina M. Locke, J.D., Editor
Alana Kolfirath, Production Coordinator

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.

Newspaper blocks commenter

CRYSTAL RIVER –The *Citrus County Chronicle* temporarily suspended a candidate for county commission from commenting on its website due to remarks she posted.

Renee Christopher-McPheeters, a frequent user of the “Sound Off” feature of the *Chronicle*’s website, is a Republican in the 2012 race for county commission.

Her remarks questioning a public official’s sexual preference and about homosexuals in general prompted the *Chronicle* Online managing editor to

remove the posts and prohibit her from posting for one week, according to the *Citrus County Chronicle*.

Christopher-McPheeters apologized for the comments but stood by her beliefs.

Other Sound Off users posted comments asking for removal of the posts from the site and to ban Christopher-McPheeters from making posts.

Chronicle Online Managing Editor John Murphy said a complete ban on posts from Christopher-McPheeters could be possible if similar comments continue.

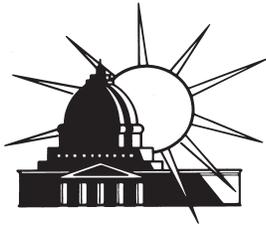
Source: *Citrus County Chronicle*

THE BRECHNER REPORT

University of Florida
Brechner Center for Freedom of Information
3208 Welmer Hall, P.O. Box 118400
Gainesville, FL 32611

Non-Profit Organization
U.S. POSTAGE
PAID
Permit No. 94
Gainesville, FL

June 2011



UF UNIVERSITY of
FLORIDA

Media fights back against privatization of records

New Jersey's public access law emerged from the Stone Age in 2002 after the *Asbury Park Press* and our Gannett newspaper group waged a five-year battle against the dark lords of government secrecy. It wasn't easy and it wouldn't have been possible without the support and encouragement from the Brechner Center and its staff. My first foray into fighting government concealment of public documents was in 1997 with a series called "The Right to Know Nothing." It won the Brechner Freedom of Information Award that year and gave us the boost to take the effort to the next level.

In 1999, we surveyed more than 600 public bodies to prove how dismal our antiquated open records law was. The "Public Access: Denied" series won a second Brechner award, but we didn't stop there. We spent the next three years writing almost daily stories and editorials on why lawmakers won't change the law. The pressure worked. In 2002, our new Open Public Records Act, or OPRA, was passed. It was like a bucket of water had been

The Back Page

By Paul D'Ambrosio

tipped on the head of the wicked witch in Oz. Nearly every piece of paper, computer database and payroll was open to the public. Moreover, officials had to turn over documents within seven days of the request or face the prospect of a lawsuit. If the plaintiff won in court, all legal fees would be paid by the offending government body.

Happy ending, right? Nope. In 2009, we published an expose about New Jersey's destructive property tax system called "The Tax Crush," the winner of this year's Brechner FOI Award – our third. My staff and I filed about 100 Open Records requests for all the salary and overtime reports in the towns that we cover. Many towns complied. We found outrageous examples of police chiefs in towns with fewer than 10,000 people making more than the head of the Philadelphia police department. We found huge payouts for public employees that topped \$200,000.

But in some cases, we found nothing. We couldn't. A number of towns told us we could have the information, but for a price. A big price. One small town said their payroll would cost us \$1,100.

This is the new bureaucratic game of "keep away."

They can no longer deny requests for public information, but they can assess citizens a "programming" or "special service" fee.



Paul
D'Ambrosio

Many towns have turned their most public records, such as the payroll, over to private vendors for processing. The vendors, who are not covered by OPRA, can charge any price they want to a requestor.

This is just plain bad for the public and bad for freedom of information. This is also a new wrinkle in the law, one that, I am sorry to say, has won some protection in court. The *Press* filed suit against one town claiming that letting a private company control access to public documents is tantamount to denying access to the public. A trial judge dismissed the case out of hand, saying

there was no basis to compel the town to give us the records for a nominal cost. We appealed. We won – sort of. The higher court sent the case back to the judge and ordered him to hold a trial. I am certain that we will have to appeal and ultimately have the state Supreme Court issue a final ruling.

This privatization of government documents is a growing concern not only for us, but across the country. I have run into increasing resistance from government bodies for electronic copies of payrolls. The honest ones tell me they don't want to see us post them on the web. Others dared us to sue, saying, "we have no canned report for what you are seeking." Another said it would cost \$910 to have its private vendor produce a spreadsheet of 750 employees – about \$1.21 per employee. One begrudgingly turned over a disk after two months and many letters from our lawyers, but refused to give us the code sheet so we can translate the job and department codes into English.

All this is a cautionary tale in vigilance. There are many ways to obfuscate the intent of the law, which the dark lords of no-information skillfully use. Yet there are few citizens who have the means to hire a lawyer in the hopes of winning a suit two or three years down the road.

While New Jersey's public access law is better today than it was in 1997, it can always be better tomorrow. Whenever public officials seek to hide their dealings from the public, we, as the media, must be there to fight for their right to know.

Paul D'Ambrosio is the Regional Editor, Investigations and Interactive Media, for the Asbury Park Press. "Tax Crush" won the 2010 Brechner FOI Award and was a finalist for the 2010 Pulitzer Prize in Public Service. Read it online at www.app.com/TaxCrush.