

---

# THE BRECHNER REPORT

---

Volume 35, Number 9 ■ 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

September 2011

## Governor relaxes restrictive records fee policy

TALLAHASSEE – After months of complaints from the media and open government advocates, Gov. Rick Scott has eased his fee policies for public records.

Scott's policy was to charge the maximum allowable under state law to fulfill public records requests.

Scott also charged for requests that took less than 30 minutes to fill, whereas

previous administrations completed these for free.

"There are going to be additional enhancements that further embrace Florida's Sunshine Laws," Scott spokesman Brian Burgess said. "We're moving in that direction."

The new policy will also include lower charges for the time taken to fulfill the request. Instead of charging the hourly rates of an attorney or employee

whose records were being requested, Scott's office will charge based on the salary of the administrative staffer who sifts through the records. For example, it would have cost \$79 per hour for Burgess' emails but that will now drop to about \$19.

"It's a step forward. It's moving in the right direction," former First Amendment Foundation Director Jim Rhea said.

*Source: The Palm Beach Post*

**ACCESS  
RECORDS**

## Proposed Fla. law would prevent juror profiteering

ORLANDO – A state lawmaker has proposed a bill that would keep jurors from profiting from their service for at least nine months.

State Rep. Scott Randolph (D-Orlando) filed House Bill 51 in the aftermath of the Casey Anthony trial.

If passed, violation of the law could result in felony charges.

"We don't want jurors during jury selection thinking about profits," Randolph said, "or thinking about that in

the jury deliberation room as well."

"It's just trying to take away that financial incentive so there are no shenanigans in the jury room," Randolph said.

Though the names of the Anthony jurors are still under seal, one of the jurors who already went public, Jennifer Ford, said she thinks it is a good idea.

"I don't think there should be profit

off someone else's misfortune," Ford said.

But, the law might be vulnerable to constitutional challenges on First Amendment grounds.

For example, the U.S. Supreme Court has previously struck down a law that prevented criminals from profiting from storytelling about their crimes.

*Source: The Tampa Tribune*

**COURTS**

## Judge orders removal of religious monument

DIXIE COUNTY – A federal judge has ruled that Dixie County must remove a granite monument of the Ten Commandments from the steps of a courthouse in Cross City.

The monument has been at the courthouse since 2006, and the order of removal is the result of a lawsuit against the county by the American Civil Liberties Union of Florida.

The ACLU alleged, and U.S. District Court Judge Maurice Paul agreed, that the monument violates the

separation of church and state.

The monument was paid for and is maintained by a private resident, but "the location and permanent nature of the display make it clear to all reasonable observers that Dixie County chooses to be associated with the message conveyed," Judge Paul wrote in his ruling.

The monument was a form of government speech and therefore violates the Establishment Clause of the Constitution, according to the opinion.

The Liberty Counsel, a conservative nonprofit organization, represented the county in federal court.

"This is only the first step in a march to the United States Supreme Court," said Matthew Staver, founder and chairman of The Liberty Counsel.

ACLU of Florida Director Howard Simon said it is "the right thing to do" to move the monument.

"We hope that Dixie County officials will find a permanent place for it at a church or other house of worship, which is the appropriate place for religious monuments," Simon said.

*Source: The Gainesville Sun*

**FIRST  
AMENDMENT**

# Tallahassee red light camera vendor shuts out city

TALLAHASSEE – The City of Tallahassee denied a public records request for individual red-light camera citations, citing resistance from the company that handles the citations.

The contractor, Virginia-based ACS State & Local Solutions, will not even give the city the citations without redacting names and addresses.

An attorney for ACS said that federal law and the company’s contract with the Florida Department of Highway Safety and Motor

Vehicles prevent it from providing the information.

A 2010 advisory opinion from the Florida Attorney General regarding the same issue in Juno Beach indicated that such a public records request should be fulfilled.

ACS entered into the contract with the city of Tallahassee in December 2009, and in the past year has been paid about \$436,928.

“We quite honestly assumed without putting anything in the contract that

it would all be public record,” City Deputy Attorney Lewis Shelley said.

The records request came from the Tallahassee Democrat, who asked for a complete list of all mailed citations from Aug. 1, 2010 to July 15, 2011.

“Agencies should consider the impact of the contracts that they enter into with private vendors and the impact they have on access to records,” former First Amendment Foundation Executive Director Jim Rhea said.

*Source: Florida Today*

# Station wants video unsealed

ORLANDO – A television station is trying once again to obtain video footage of Casey Anthony captured while reacting to news that her daughter’s remains were found.

Orange County Sheriff’s officials instructed jail corrections officers to record the video of Anthony’s reactions in December 2008 but refused to released the video, saying that it was evidence in an ongoing criminal investigation.

In June 2009, Circuit Judge Stan Strickland ordered that the tape be sealed

“until further order of this court.”

“While the court is loath to shield any public record, an argument can certainly be made that the contents of the video are highly inflammatory,” Judge Strickland wrote in his 2009 ruling.

Anthony’s lawyers had requested the video be sealed so that potential jurors would not be influenced.

Now, WKMG-Channel 6 wants the video to be unsealed, citing the lack of danger of prejudicing potential jurors as a major reason for releasing it.

*Source: Orlando Sentinel*

# Anthony libel suit stalled

ORLANDO – The woman suing Casey Anthony for defamation will have to wait until October to depose Anthony, who was recently cleared of first-degree murder and other felony charges.

During the investigation of 2-year-old Caylee Anthony’s whereabouts, Casey Anthony told investigators that her daughter

## **LIBEL**

was kidnapped by a nanny named Zenaida Gonzalez. Gonzalez contends that the allegations resulted in death threats against herself and her children. Gonzalez denied knowing Anthony or her daughter.

The judge presiding over the defamation case ruled that Anthony would be interviewed under oath on Oct. 8, despite Gonzalez’s request for a deposition within weeks of the conclusion of Anthony’s trial.

Anthony’s attorney, Charles Greene, requested that when the deposition does eventually occur that it be sealed.

*Source: CBS News, CNN.com*

# Jacksonville pension fund loses public records lawsuit

JACKSONVILLE – A Duval County activist has prevailed in his public records lawsuit against the Jacksonville Police and Fire Pension Fund.

Curtis Lee, director of the Concerned Taxpayers of Duval County, took the fund to court over about \$3,000 in charges for public records.

Circuit Judge James H. Daniel ruled that although the fund didn’t act willfully in breaking the Public Records Law, it still attempted to overcharge Lee for accessing its records.

Daniel ruled that the fund should not have asked Lee to pay \$280 so an employee could supervise Lee’s inspection of the records for eight hours.

Daniel also found that the fund should not have asked for \$27.66 per hour for an employee to make copies of the records before copies were even requested.

In addition to its own \$160,000 in legal fees, the fund might also be responsible for part of Lee’s attorneys’ fees.

*Source: The Florida Times-Union*

# Citizen seeks court’s help in records request

SPRING HILL – After being asked to fill out a form before receiving public records, a Spring Hill man filed an emergency petition in circuit court.

Ian Norris had asked to see all emails sent and received by the Spring Hill Fire District during most of the month of April

2011. The fire chief reportedly told Norris to fill out a form and gave an estimate of \$510 for copies of the 3,400 emails.

Norris contends he made a follow-up request to receive electronic copies instead of paper copies but months later, the district still had not complied.

Fire Chief Mike Rampino told the *St. Petersburg Times* that Norris was previously offered the opportunity to inspect the emails during business hours but hadn’t done so.

*Source: Hernando Today, St. Petersburg Times*

## Dunedin officials reject restrictive email policy

DUNEDIN – A plan to permanently shut down a terminal that provided access to city emails and instead require formal requests was scrapped by Dunedin commissioners against the advice of the city attorney.

The public computer in City Hall was shut down after city attorney Tom Trask raised concerns about potential privacy violations if things such as Social Security numbers and medical information were revealed.

The City Commission voted 4-1 to keep easy public access, citing the time and expense of screening all emails as

### ACCESS RECORDS

a waste of taxpayer money. “If we are all

properly trained to catch that once-in-a-lifetime thing, I think that solves the issue,” Commissioner Julie Ward Bujalski said.

Dissenting Commissioner Julie Scales cautioned that problems could arise if employee privacy is compromised.

Source: *St. Petersburg Times*

## Florida lawsuit gets \$5K boost from Knight FOI litigation fund

ST. PETE BEACH – A resident who accuses St. Pete Beach city commissioners of meeting in private will get assistance in filing an Open Meetings suit from the Knight FOI Fund.

The fund, administered by the National Freedom of Information Coalition, gave a \$5,000 grant to attorney Kenneth Weiss to file a lawsuit on behalf of resident Jim Anderson.

The money will go toward filing fees, depositions and other costs associated with the lawsuit but not attorney’s fees.

Anderson alleges that the commission held secret meetings to discuss a ballot referendum that gave them the power to make development decisions without

voter approval.

“NFOIC doesn’t have a stake in a Florida development squabble,” NFOIC Director Kenneth Bunting said. “But when a city government tries to use the emotions surrounding such an issue to expand how much public business it can conduct

behind closed doors, it gets our attention.”

City officials are likely to argue that any potential violations that occurred during the legal strategy meetings were cured by subsequent discussion at public meetings.

The Knight FOI Fund began in January 2010 and has distributed 19 grant awards.

Source: *NFOIC*

### ACCESS MEETINGS

## FIRST AMENDMENT CONTINUED

## Fla. lawyer prohibited from posting bank employee videos

SARASOTA – A foreclosure defense attorney lost his appeal to the 2nd District Court of Appeal, with the appeals court ruling that the injunction preventing him from posting bank employee depositions on YouTube will remain in effect.

Attorney Christopher Forrest took the depositions in connection with his representation of defendants in a foreclosure case.

He posted the interviews of low-

level bank employees discussing the paperwork created at their jobs, but in December the trial judge ordered him to remove the videos from the website.

Forrest appealed to the 2nd DCA, alleging that his free speech rights were being violated.

The 2nd DCA, however, saw the issue as one of a trial judge’s discretion in preventing abuse of the discovery process.

Source: *Sarasota Herald-Tribune*

## Movie photo ban results in lawsuit

FORT LAUDERDALE – Prohibitions on photography instituted in downtown Fort Lauderdale are the subject of a First Amendment lawsuit.

Fort Lauderdale police enforced the ban near the downtown shooting location of the film *Rock of Ages*, starring Tom Cruise, Alec Baldwin and Catherine Zeta-Jones.

Off-duty officers hired to guard the movie shoot said the “no trespassing” signs that also say “Photography of this area is prohibited” were erected in response to aggressive paparazzi.

“It’s also a matter of public safety,” city spokesman Matt Little said.

SouthFloridaGayNews.com and the Society of Professional Journalists filed suit against the city and the police chief, alleging that the ban works to “chill and deny First Amendment protections.”

“The film, its creation in South Florida, the presence of its celebrity cast in the area are newsworthy events which the local media is entitled to report on,” the suit states.

Source: *The South Florida Sun-Sentinel, The Palm Beach Post*

### 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](mailto:brechnerreport@jou.ufl.edu)

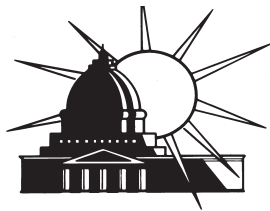
Sandra F. Chance, J.D., Exec. Director/Exec. Editor  
Christina M. Locke, J.D., Editor  
Kara C. Murrhee, Assistant Editor  
Alana Kolifrath, Production Coordinator

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.

# THE BRECHNER REPORT

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

September 2011



UF UNIVERSITY of FLORIDA

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

## Flood us with info, don't soak us with fees

Rick Scott has gone national. And not in a good way. He caught our eye early on here in Washington as his dust-ups with local media and anti-transparency maneuvering seemed to be a daily occurrence.

One of the low points of his new administration came last March when the governor announced he would abandon Charlie Crist's policy of not charging media requesters for public records. The media of course objected, arguing that it was an attempt to thwart access. Scott replied it was the fiscally responsible thing to do. Bowing to pressure, Scott partially relented this July and issued a revised fee policy that is slightly less onerous, albeit a far cry from past practice.

In another professed nod to transparency, Scott has also this year launched his accountability website "Florida Has a Right to Know." The site contains information related to, for example, state contracts, payroll and pensions.

### The Back Page

By Mark R. Caramanica

are undoubtedly straining FOIA processing, and officials are seeking ways to lower costs and recoup fees. At the same time, the Obama administration has invested heavily in promoting proactive disclosures and making information available online through sites like data.gov and recovery.gov.

These directives go hand-in-hand: Get people the information they truly demand in an efficient way and less net resources will over time be devoted to FOIA compliance. However, the dual goals of managing budget concerns and effectively getting information to the public often seem to work at cross-purposes.

My own experience with a recent federal FOIA request left me perplexed. After receiving a fee estimate of a few hundred dollars, I called the agency to see what could be done to lower the estimate. I was told the only thing to do was narrow the scope of the request. When I asked how much it would cost to receive the information on an electronic disk instead of in paper form, I was told, "Oh, nothing, I guess." Let's go ahead and do that, OK?

Obviously, it takes less time to make an electronic copy of a record than to pay someone to stand over a copy machine for hours, not to mention that it would save us a few hundred dollars. But this simple, yet forward-thinking and mutually beneficial



Mark R. Caramanica

solution seemed to be lost on that agency. They are focused on cost recoupment rather than cost savings.

This is the lesson to be gleaned from federal websites like data.gov. While admirable in design, it has been roundly criticized for containing massive quantities of data that the general public and media have little use for in large data formats that only the most tech-savvy number crunchers can utilize. In short, these efforts often simply do not reflect demand. It is then no surprise when agencies are busier than ever responding to FOIA requests. Agencies must think strategically about how best to leverage

technology to reduce FOIA compliance burdens. The answer should not be to penalize the requester with higher fees.

Some at the federal level have been more strategic. The newly created Consumer Financial Protection Bureau posts Elizabeth Warren's interactive daily calendar online. It is one of the agency's most popular pages, receiving about 3,000 views per month, according to the agency. Compare this with legislators in California who are still resisting public access to the very same information about themselves despite the demand.

Federal technology initiatives have recently also been held hostage by spending cuts. After the federal Electronic Government Fund was slashed from \$35 million to \$8 million earlier this year, the Obama administration was forced to scuttle certain open government websites and prepare for serious cuts for existing sites. Do such cuts make long-term economic sense?

Gov. Scott should take note of what has already occurred in Washington. Websites like "Florida Has a Right to Know" have the potential to be robust information portals but suffer from selective, summary data postings that only leave people wanting more. If such sites were truly designed to alleviate fiscal burdens, they should at the very least aim to provide greater access to complete, primary documents and directly reflect what information is most routinely and frequently requested. Florida does have a right to know, and the Scott administration should not be looking to price out accountability under the guise of fiscal responsibility. The transparent and fiscally responsible course is to invest in means that enable quality information to be disseminated quickly and cheaply, leading to long-run cost savings. Doesn't that sound like something a CEO would understand?

Mark R. Caramanica is the Freedom of Information Director at The Reporters Committee for Freedom of the Press.