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# THE BRECHNER REPORT

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## Proposal shows budget reduction for Fla. courts

TALLAHASSEE – Florida needs an additional 71 trial court judges and one judge for the 2nd District Court of Appeals in Lakeland, due to an increase in mortgage and civil cases and demands on staff due to a growth in the number of cases filed pro se, according to the Florida Supreme Court.

The request for more judgeships – 23 in circuit court and 48 in county court—comes on the heels of a \$2 billion shortfall in projected revenue for the next fiscal year.

Gov. Scott's budget proposal for the

2012-2013 fiscal year released last month, however, showed \$434 million dedicated to funding the court system – a \$2.8 million decrease from the current fiscal year—and no new positions.

“Our judges continue to absorb the work previously performed by magistrates, law clerks, case managers, and other supplemental support staff lost in the budget reductions of the last several years,” the justices wrote in a release.

“Most of these positions provided

direct case management, legal research, and adjudicatory support to our judges.

Chief judges have advised us that the loss of support staff translates into slower case processing times, crowded dockets, and long waits to access judicial calendars.”

Despite the growing backlog and increase in workload, the courts have also been hit economically as there has been a reduction in filing fees, which the courts rely heavily upon for funding, the justices noted.

*Source: Sunshinestatenews.com*

### COURTS

## Bill would make transition emails public record

TALLAHASSEE – Legislation introduced in the 2012 legislative session would make it clear that all records, including emails sent and received by newly-elected officials, would be public records, even if the person has not yet been sworn into office.

Sen. Don Gaetz (R-Niceville) filed the

legislation after email accounts of Gov. Rick Scott and as many as 50 transition officials were erased by a private company providing email service.

While the investigation has yet to wrap up, documents released so far showed that

emails from both an iPad and smartphone used by the governor were lost. The

Scott administration said it is supporting the bill to avoid what happened this past year.

If passed, S.B. 1464 would take effect in July.

*Source: The Miami Herald*

### ACCESS RECORDS

## Activist group sues for primate research records

GAINESVILLE – The University of Florida has been ordered to comply with a Wildwood-based animal rights activist group's request for primate research records.

The lawsuit filed in the Eighth Judicial Circuit Court in Gainesville by Camille Marino, founder of Negotiation is Over (NIO), seeks to compel the university to provide records relating to 33 primates mentioned in a federal inspection report,

*The Gainesville Sun* reported.

Marino made the request for records held by UF research facilities last fall. The university initially denied the request, citing a state law protecting the confidentiality of veterinary patient records. The university also said that purchasing reports more than five years old are destroyed under state regulation.

In ordering the records released, Circuit Judge Martha Ann Lott found that the

public records exemption applies only to the confidentiality of pet records held by a private veterinarian.

UF will have the opportunity at a later hearing to show that the information falls under another public records exemption covering security plan information.

Marino said she planned to use the records to continue a campaign against animal research at UF.

*Source: The Gainesville Sun*

## Scott names new public records director

TALLAHASSEE – Gov. Rick Scott named four new officials to his cabinet, including a new public records director.

In January, Bonnie Hazelton, former director of the Office of Ombudsman and Public Services, took over as director of Scott's Office of Open Government.

Before joining the Scott administration, Hazelton served for four years as the director of the Office of the Ombudsman and Public Services at the Florida Department of Environmental Protection, where she held the position as the primary open government contact.

*The Miami Herald* reported in an earlier story that the position became open when Scott's former director of the Office of Open Government resigned to run for circuit court clerk in Martin County.

*Source: The Miami Herald*

## Congress mulls bill requiring cameras in high court

WASHINGTON, D.C. – The U.S. Senate is once again considering a bill to allow cameras to videotape oral arguments before the nation’s highest court.

Discussion before the U.S. Senate Judiciary and Oversight Committee came in the wake of the filing of H.R. 3572, The Cameras in the Courtroom

Act of 2011, which would require open proceedings before the U.S. Supreme Court to be televised, unless a majority of the justices voted that doing so would constitute a violation of due process rights of one or more parties before the Court.

Similar bills to come before Congress in previous legislative sessions have died three times in committee.

In 2010, Supreme Court Chief Justice John G. Roberts authorized audio recordings of the court’s oral arguments to be released at the end of each week. In prior high-profile cases, the Supreme Court released audio recordings of oral arguments within minutes of their completion.

Source: RCFP.org

## Justices assess role of damages under Privacy Act

WASHINGTON, D.C. – The U.S. Supreme Court heard oral arguments involving whether a plaintiff can recover for emotional damages under the Privacy Act when government agencies exchange information that could cause “severe emotional distress” to the person about whom the information pertains.

The 9th Circuit Court of Appeals in San Francisco recently held in *Federal Aviation Administration v. Cooper* that a plaintiff could be compensated for emotional injury under the Privacy Act even though he suffered no monetary damages, such as for medical bills.

The case arose after government agencies exchanged information regarding Cooper’s medical condition. Although Cooper did not disclose the fact that he is HIV positive to the Federal Aviation Administration in his application for a medical certificate that he needed for his pilot’s license, he had previously provided that information to the Social Security Administration upon application for long-term disability benefits.

The FAA became privy to the information when the two agencies exchanged files as part of “Operation Safe

Pilot,” a government initiative meant to discover licensed pilots unfit to fly.

The lawsuit before the 9th Circuit focused on the dispute regarding the definition of “actual damages” under the Privacy Act, which protects the confidentiality of certain personal information in federal agencies’ data systems and allows the injured to recover for a violation. The decision could have a potential impact on the types of information government agencies would be willing to release.

Source: RCFP.org

## SAO: Informal meetings did not violate Sunshine Law

ALACHUA COUNTY – The Florida State Attorney’s Office found that the Alachua County Commission’s long-held informal meetings were not a violation of the state’s Sunshine Law.

County Attorney Dave Wagner said that the meetings, which date back to the late 1990s, have been held as an opportunity to discuss county issues and build consensus without taking a vote or final action, *The Gainesville Sun* reported.

State Attorney Bill Cervone said that his office spent more than 100 hours on

the investigation and consulted with Pat Gleason, counsel to the Florida Attorney General and a Sunshine Law expert, before coming to the conclusion that the meetings complied with Sunshine Law.

“There is nothing illegal or improper about informal meetings,” said Cervone in a statement, reported the *Sun*. “They can serve a useful purpose in allowing free and full discussion of an issue without the time constraints that a formal Commission meeting might impose, and are completely permissible so long as properly noticed

and held in a public setting.”

In the wake of the allegations, county commissioners took steps not required by the Sunshine Law to make the informal meetings more publicly accessible.

They were televised and also streamed live on the county’s website, where video and audio archives are also available.

Although Wagner noted that the agendas are not necessary for informal meetings, the commission said it would make agendas available to let the public know the majority of issues up for discussion, the *Sun* reported.

Source: *The Gainesville Sun*

## Group disputes Manatee commission prayers

MANATEE COUNTY – The Manatee County Commission reaffirmed its practice of beginning its meetings with a prayer, despite requests by a non-profit organization to halt prayers before its meetings.

An attorney representing the Wisconsin-based Freedom From Religion Foundation, Inc., wrote to the commission, contending that its practice of opening its public meetings with a prayer violates the nation’s constitutional principle of

separation of church and state.

“Commissioners are free to pray privately, or to worship on their own time in their own way; they do not need to worship on taxpayers’ time,” the group’s attorney wrote.

Manatee County Chief Deputy County Attorney Jim Minix told commissioners that the county’s attorney’s office believes that the practice does not violate any law, according to the *Bradenton Herald*.

“We’re not trying to impose any particular religion on the public or at the meeting,” Minix said in the release.

“We try very hard to make it as open and non-denominational as possible.”

Although the commission has twice received letters from groups opposing the prayer before meetings, no lawsuit has been filed.

Source: *Bradenton Herald*

ACCESS MEETINGS

PRIVACY

FIRST AMENDMENT

## Obama orders agencies to reform record-keeping

WASHINGTON, D.C. – President Barack Obama issued a memorandum calling on federal agencies to reform their record-keeping practices in ways designed to make wider use of digital-based recordkeeping systems.

The memorandum orders the federal agencies to submit specific plans on how they will better manage electronic records, including emails and social media data, and report to the Office of Management and Budget within 120 days, *The Washington Post* reported.

Agencies have also been asked to report on their use, if any, of cloud-based storage services, a method for storing data in remote data centers.

“When records are well managed, agencies can use them to assess the impact of programs, to reduce redundant efforts, and to share knowledge within and across their organizations,” the memo stated. “In these ways, proper records management is the backbone of open Government.”

Source: *The Washington Post*, RCFP.org

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## FOIA recommendations stalled

WASHINGTON, D.C. – The Office of Management and Budget (OMB) has taken no further public action on recommendations to improve implementation of the federal Freedom of Information Act (FOIA), although discussions are allegedly ongoing.

Those recommendations were proposed to OMB in February 2011 by the Office of Government Information Services (OGIS), established by the OPEN Government Act of 2007 for the purpose of providing

recommendations to Congress and the executive branch.

Although the substance of the recommendations have not been made publicly available, Miriam Nisbet, director of the OGIS, said she hopes to “see some movement” within OMB on those recommendations soon.

These are the first set of recommendations OGIS has made since opening its doors in 2009.

Source: RCFP.org

## Ethics board dismisses complaint

DEERFIELD BEACH – The Florida Ethics Commission found no probable cause to pursue complaints against one current and four former officials of Deerfield Beach.

Separate complaints were filed against each of the five officials—including Vice Mayor Marty Popelsky, suspended Commissioner Sylvia Poitier, former Mayor Al Capellini and former Commissioners Steve Gonot and Pam Militello—over allegations they failed to properly disclose free tickets they received

to the Mango Festival previously held in the city or solicited tickets to it from city lobbyists.

An investigation by the Ethics Commission found no evidence to support the contention that the officials had broken state ethics rules for accepting and not reporting gifts. However, three of the five officials have already been removed from office for other reasons, including official misconduct and falsifying public records.

Source: *South Florida Sun-Sentinel*

## Cape Coral rescinds records policy

CAPE CORAL – After about a month of charging fees for public records requests taking longer than 15 minutes, Cape Coral rescinded its public records policy, restoring the threshold for “extensive” requests to an hour.

City Manager Gary King originally amended the policy in October, requiring the city to begin adding staff time to retrieve and prepare records at 15 minutes, but was then criticized by citizens and council members when he announced that a records request for his cell phone records would cost more than \$700 to retrieve and prepare.

Councilmember Marty McClain

ACCESS RECORDS

made the request for King’s cell phone records when questions arose as to King’s involvement in a string of communications between councilmembers subject to Sunshine Law requirements.

Although staff time for completing records requests is typically billed at the rate of the lowest paid individual on city staff capable of compiling and preparing

the records requests, King previously said information needed to be redacted from the records and he was the only one who would know what information was sensitive and what was not.

Source: *Cape Coral Breeze*

## Crestview investigation expands

CRESTVIEW – After reviewing more than 5,000 emails, the State Attorney’s Office has expanded its investigation into alleged Sunshine Law violations committed by the Crestview City Council.

Bill Eddins, state attorney for the First Judicial Circuit, said that the office has filed subpoenas for additional records held by councilmembers but did not specify what additional records had been requested.

“As a result of our initial review we’ve found there are a significant amount of additional records we need to look at in order to sufficiently evaluate this case,” Eddins said.

The Sunshine Law prohibits elected officials from discussing matters of public interest with one another outside of a public forum.

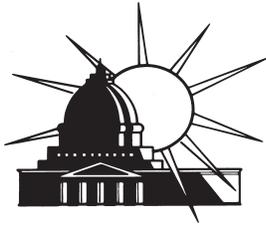
Source: *Northwest Florida Daily News*

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## Stay informed: Online FOI resources offer abundant info

Florida has a long standing cherished tradition of open records and meetings. Attorney General Pam Bondi has made open government a priority, stating: "In our state, transparency is not up to the whim or grace of public officials. Instead it is an enforceable right of the people."

As special counsel for open government for Attorney General Bondi, I hear from many Floridians who are using the Sunshine and Public Records Laws to learn about government actions affecting them and their communities.

The following is a sampling of some of the more frequent questions that I receive and the resources that are available to answer them:

1. *How can I find out how many public officials have been prosecuted for violating the open government laws?*

The Brechner Center website contains, among other things, a listing of prosecutions of public officials charged with violating the Sunshine and Public Records Laws. Information about attorney's fees awarded to successful public records litigants is also included. The site can be reached at: [www.brechner.org](http://www.brechner.org).

2. *I want to make a public records request to a state agency but I don't know who to send it to. How can I obtain information about this?*

The Office of Open Government posts an "open government contact" list for all state agencies. The Office of Open Government website is located at: [www.flgov.com](http://www.flgov.com). In addition, helpful information is often available from individual agency websites. For example, the Department of Environmental Protection website, [www.dep.state.fl.us](http://www.dep.state.fl.us), contains "Resources for Citizens" which provides guidance on how to make public records requests to the Department as well as answers to frequently asked questions.

Contact information for local governments is also often available at the local government's home page. However, if there is no open government information contained there, I recommend addressing your request to the "records custodian"



Pat Gleason

for the local government. It can also be helpful to copy the local government's attorney either by name or by title, such as "City Attorney."

3. *I noticed a citation to a circuit court case in the Sunshine Manual that I would like to read. How can I obtain a copy of the judge's decision?*

Copies of circuit court and county court cases cited in the Manual are available online from the Office of the Attorney General website: [www.myfloridalegal.com](http://www.myfloridalegal.com). Click on "open government" and look for Sunshine Cases. An electronic edition of the Sunshine Manual and training materials are also located at this site. Attorney General Opinions may also be accessed by clicking "legal resources" and using the searchable opinions database.

4. *Where can I locate a sample public records request form?*

While public records requests do not have to be made in writing, it can be more effective to make a written request to minimize potential disputes concerning when the request was made and what was requested. An excellent public records request form is located at the First Amendment Foundation website: [www.floridafaf.org](http://www.floridafaf.org). Helpful tips on making public records requests are also located at this site as well as summaries of recent open government legislation.

5. *How can I find out how long an agency must keep a particular public record?*

Section 257.36(6), Florida Statutes, states that a "public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the Division of Library and Information Services in the Department of State. In accordance with this mandate, the Division has adopted schedules which establish the retention and destruction guidelines for various types of records. General Records Retention Schedule GS1 applies to state and local governments, while the GS2 applies to law enforcement agencies. More information about records retention schedules can be found at the Division's website: [www.dos.state.fl.us](http://www.dos.state.fl.us). Click on "library and information services" and look for "services for records managers" to find out more about records retention and management responsibilities.

*Pat Gleason is special counsel for open government for Attorney General Pam Bondi.*