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# THE BRECHNER REPORT

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Volume 36, Number 3 ■ 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  
March 2012

## Nonprofits publish Fla. spending data, salaries

TALLAHASSEE – Visitors to FloridaOpenGov.org can now sift through a database tracking billions of dollars in public spending in Florida on the state and local levels.

Information on the website, launched by the Naples-based think tank Foundation for Government Accountability, took months to compile and costs about \$15,000, according to the head of the foundation.

Visitors can access payroll data, including salaries and benefits, and state payments to public and private vendors, the *Naples Daily News* reported.

The nonprofit organization Sunshine Review also released in January its first state government salary report. It analyzes public sector employee salaries in 152 local governments, spanning eight states, including Florida,

according to the *Pensacola News-Journal*.

Sunshine Review investigated spending of public sector employees, including benefits and government perks, during the last four years.

Among the findings were that 171 public sector employees in Florida earn more than \$150,000, the *News-Journal* reported.

Source: *Naples Daily News, Pensacola News-Journal*

## Judge: Privilege protects prisoner's letter

JACKSONVILLE – A Jacksonville judge ruled that the state shield law protects a newspaper from being forced to hand over an imprisoned woman's letter.

Biannela Susana, the mother of 12-year-old Cristian Fernandez, wrote the letter to a reporter at

*The Florida Times-Union*. Cristian was charged with first-degree murder in the death of his 2-year-old brother.

The State Attorney's Office subpoenaed the *Times-Union* for the letter after the

newspaper incorporated various statements from the letter in a news article.

In the letter, Susana wrote that she grieves for her dead 2-year-old son while agonizing over what will happen to her

older son, the *Times-Union* reported in an earlier story.

The *Times-Union* moved to quash the subpoena,

arguing that the state's journalist's privilege protected the letter. According to Florida Statute, "a professional journalist has a qualified privilege not to be a witness concerning, and not to disclose information, including the identity of any

source, that the professional journalist has obtained while actively gathering news."

Additionally, the *Times-Union* alleged that the letter was also privileged under the Florida Administrative Code, which provides that inmate mail to and from the news media is privileged.

After in camera review, Judge Elizabeth Senterfitt, for the Fourth Judicial Circuit, ruled that the state had not met its burden under the shield law. She also agreed that the letter was privileged under the Florida Administrative Code.

Source: *The Florida Times-Union, State v. Susana*

## Ordinance attacks sign spinning

DELTONA – Deltona's city attorney drafted an ordinance that would require local businesses to obtain permits to hire sign spinners and restrict the activity to no more than 10 days in a calendar year, *The Daytona Beach News-Journal* reported.

The ordinance was drafted and distributed in

response to complaints

made by Deltona city commissioners at recent meetings that sign spinning could potentially pose a danger to people near street intersections.

"They're annoying and it poses a danger to the people riding and crossing

the street," Commissioner Zenaida Denizac said.

Local businesses hire sign spinners to stand on street corners to attract motorists' attention.

Courts in other states have struck down ordinances targeting similar activity, holding that limiting human advertising violates the First Amendment, according to the *News-Journal*.

The city's attorney specifically noted that political sign-waving—a local campaign staple—would not be banned by the ordinance.

Source: *The Daytona Beach News-Journal*

## 2 Fla. cities win award

TALLAHASSEE – Two Florida cities won an open government award for passing local laws that ensure people's ability to speak at city meetings.

The Lake Helen and Sanford city commissions received the Pete Weitzel/Friend of the First Amendment Award at a luncheon given by the First Amendment Foundation in January.

The cities passed their own "right to speak" laws when similar ones died in the state Legislature, Foundation president Barbara Petersen said.

Source: *Local10.com*

REPORTER'S  
PRIVILEGE

FIRST  
AMENDMENT

## Warrantless GPS tracking found unconstitutional

WASHINGTON, D.C. – The U.S. Supreme Court unanimously ruled that police violated the Constitution when they placed a Global Positioning System (GPS) tracking device on a suspect's car and tracked its movements for 28 days.

The trial court originally convicted Antoine Jones, a D.C. nightclub owner, of drug charges on evidence obtained from the tracking device. But the 11th Circuit Court of Appeals

overturned the conviction, finding that such intrusive monitoring required a warrant.

Opining for the majority, Justice

Antonin Scalia wrote in *United States v. Jones* that, "We have no doubt that such a physical intrusion would have been considered a 'search' within the meaning of the Fourth Amendment when it was adopted."

By using evidence gathered after the

warrant had expired, the Justices agreed without dissent, that the government violated Jones' Fourth Amendment rights against unreasonable search and seizure.

However, the Court's nuanced decision leaves open larger questions about how the government may use the information generated by modern technology for surveillance purposes, *The Washington Post* reported.

Source: *The Washington Post, The Wall Street Journal*

### PRIVACY

## Court: 911 can't record some outgoing calls

TALLAHASSEE – An appellate judge has ruled that 911 operators can record incoming emergency calls and call-backs to the same number but cannot record outgoing calls to other numbers without consent.

A mother called 911 to report a disturbance at her daughter's house next door. When the operator called the daughter's house, the call was answered and the dispatcher heard a man threatening to shoot everyone in the house and himself.

That call was recorded.

Prosecutors used the call as evidence in the man's aggravated assault conviction.

But communications intercepted and recorded in violation of Florida's Security of Communications law are not admissible in judicial proceedings, subject to limited exceptions that were not applicable in the case, *The Associated Press* reported.

In his ruling, Judge Kenneth L. Williams, of the 1st Circuit Court of

Appeals in Tallahassee, held that Florida law requires consent before an outgoing call can be recorded even though it relates to another emergency call, and thus, the call could not be used against the man in his conviction.

The court also found that the recording of the communication, which occurred within the residence he periodically shared with the daughter, violated his expectation of privacy.

Source: *Perdue v. State, The Associated Press*

## Man who won records lawsuit not entitled to fees

JACKSONVILLE – A Jacksonville man who sued a city pension fund over public records violations isn't entitled to recover the more than \$30,000 he spent on legal fees, a judge has ruled.

Circuit Judge James H. Daniel ruled that Curtis Lee, a Duval County activist, was entitled to \$1,245 for other expenses he faced suing the Jacksonville Police and Fire Pension Fund, but could not get back his lawyer bills, *The Florida*

*Times-Union* reported.

Lee prevailed in his public records lawsuit against the Jacksonville Police and Fire Fund in June 2011, when Daniel ruled that the fund twice overcharged Lee for accessing its records.

But the fund did not act willfully in breaking the Public Records Law, so it would not be liable for Lee's attorney's

fees, the ruling stated.

Lee took the fund to court over about \$3,000 in public records charges.

He said the ruling could give other government agencies an easy excuse for records violations if they could argue they just

misunderstood the law, according to the *Times-Union*.

Source: *The Florida Times-Union*

### ACCESS RECORDS

## Escambia tourism officials cleared of wrongdoing

ESCAMBIA COUNTY – The State Attorney's Office cleared three members of the Escambia Tourist Development Council of violating the Sunshine Law.

Investigations by the State Attorney's Office began in October after allegations arose that members of the tourism board met privately with a group of Pensacola area hoteliers to discuss plans to restructure the tourism business.

The Convention and Visitors Bureau, an arm of the Pensacola Bay Area Chamber of Commerce, annually

receives about \$2 million in bed taxes for tourist promotion. The plan was to put control of tourist marketing in the hands of a nonprofit board appointed by and composed of hoteliers, according to the *Pensacola News-Journal*.

In a statement by the State Attorney's Office, Chief Assistant State Attorney Greg Marcille wrote that there was "insufficient evidence" to show that the board members broke the state's Open Meetings Law.

"While we find that no violation of the Sunshine Law occurred, we are concerned

with members of the same board attending meetings where matters are discussed that may foreseeably come before that board," Marcille wrote in a statement. "This type of action clearly raises concerns with the general public and violates the spirit of the law. Such behavior should be strongly discouraged."

Because no discussion or exchange of information took place between the two board members who attended the same meeting, no violation of the Sunshine Law occurred, the State Attorney's Office determined.

Source: *Pensacola News-Journal*

### ACCESS MEETINGS

## Media request for shooting video denied

SARASOTA COUNTY – The Sarasota County Sheriff’s Office has denied a public records request for a video depicting the shooting and killing of a Port Charlotte man, citing a Florida law that prohibits such recordings from being released, according to the *Sarasota Herald-Tribune*.

The law, which was passed in June and signed by Florida Gov. Rick Scott in July, exempts from public viewing any photograph or video recording that depicts or records the killing of a person. It also recognizes a family’s right to privacy: only relatives of the victim can view the photo or video and authorize its release.

The video could become public at a trial, but even then prosecutors will have a chance to keep it secret.

The law is an extension of a movement toward keeping death records private, including the legal battle beginning in 2001 over NASCAR driver Dale Earnhardt’s autopsy records, according to the *Tribune*.

The law makes it a third-degree felony for records custodians to violate the law.

Source: *Sarasota Herald-Tribune*

## Inverness settles records lawsuit

INVERNESS – The Inverness County Board of County Commissioners settled a public records lawsuit out of court for \$1,450.

Inverness resident Robert A. Schweickert Jr. originally filed suit against the county, alleging that commissioners violated the state’s Sunshine Law when they met individually with an attorney hired to lobby the Legislature to add Port Citrus to Florida’s recognized list of ports.

It also alleged County Administrator

Brad Thorpe purposely withheld from the public a proposed \$50,000 contract for a law firm to lobby the Legislature on behalf of Port Citrus.

A judge ruled in favor of the resident in November 2011, according to the *Citrus County Chronicle*. When the county failed to comply with the records request, Schweickert filed a writ of mandamus. The county settled out of court later that month for ignoring the request.

Source: *Citrus County Chronicle*

## Websites protest anti-piracy bills

WASHINGTON, D.C. – Support for a pair of controversial anti-piracy bills collapsed in the face of a massive public outcry and an Internet “blackout.”

Google and Wikipedia were two of many high-profile websites to protest the legislation—H.B. 3261, the Stop Online Privacy Act (SOPA), and S. 968, the PROTECT Intellectual Property Act (PIPA)—by going “dark” on January 18, meaning they restricted usual content, or by posting information to educate visitors on the bills’ measures.

The protest occurred days before the U.S. Senate was to consider a vote. Both bills have since been tabled indefinitely.

The bills’ advocates said granting U.S. attorneys general and copyright holders more power to enforce punitive actions against rogue websites would save jobs, ensure consumer safety and increase revenues, *USA Today* reported.

The White House said in a statement,

however, that it would not support legislation that would undermine “the dynamic, innovative global Internet.”

“Any effort to combat online piracy must guard against the risk of online censorship of lawful activity and must not inhibit innovation by our dynamic businesses large and small,”

the White House said.

Just a day after the civil protest, in what federal authorities are calling one of the largest criminal copyright cases, the Justice Department and Federal Bureau of Investigation seized the website Megaupload, charging seven people connected with it with running an international enterprise based on Internet piracy. In a grand jury indictment, Megaupload—one of the most popular so-called locker services on the Internet—is accused of causing \$500 million in damages to copyright owners.

The Source: *USA Today, The Associated Press, The New York Times*

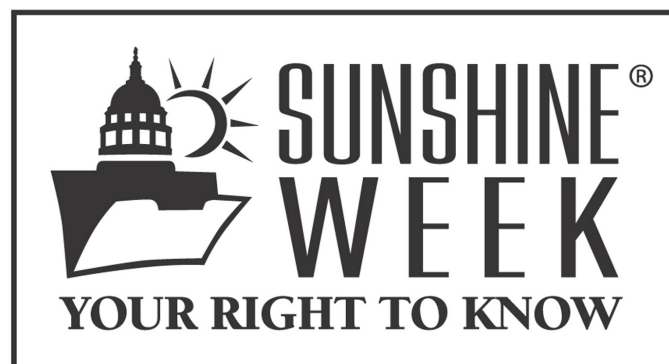
### FIRST AMENDMENT

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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.



Sunshine Week, a national initiative to promote a dialogue about the importance of open government and freedom of information is March 11-17, 2012. Show your support for open government by asking elected officials to sign the Brechner Center’s Open Government Pledge. To learn more about the program and download the pledge, visit [www.brechner.org](http://www.brechner.org).

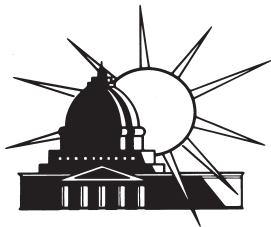


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Non-Profit Organization  
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Permit No. 94  
Gainesville, FL

March 2012



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## Federal FOIA portal aims to create a one-stop shop

Consider this: a multi-agency FOIA portal that automates FOIA processing and reporting, stores FOIA requests and responses in a repository and keeps records electronically. Not to mention allowing requesters to submit requests to fewer government websites, track the status of requests and find, view and download FOIA requests and agency responses, all in a secure online environment.

Sound like a dream? It was. Now it's becoming a reality, thanks to the Environmental Protection Agency (EPA), the Department of Commerce and the National Archives and Records Administration (NARA). If all goes as planned, the project will go live this fall.

With 97 agencies, the federal executive branch is a big place. And filing requests for information under the federal

Freedom of Information Act (FOIA) can sometimes feel overwhelming.

The Office of Government Information Services (OGIS) was established in 2009 for

### The Back Page

By *Miriam Nisbet*

the purpose of assisting the public and the government in the resolution of FOIA disputes. As the federal FOIA ombudsman, OGIS provides assistance in a variety of ways: answering questions, connecting requesters and agencies and resolving disputes to avoid litigation. OGIS also reviews federal agencies' FOIA policies, procedures and compliance.

One project OGIS has joined is to create a central online place — a module or portal — for agencies and requesters to use throughout the entire FOIA process.

The project, a partnership among several agencies started by the EPA, would result in a secure one-stop location for requesters to file FOIA requests and appeals, for agencies to provide responses, where anyone can track FOIA statistics and for all general FOIA-related information to reside. And with the federal government receiving about 600,000 FOIA requests each year, the portal could increase the efficiency of the FOIA process.

The cost is about \$1.3 million, the bulk of which is being paid by the EPA and the Department of Commerce; the partnership is



*Miriam Nisbet*

seeking more agency participants for the project, which is projected to save as much as \$200 million over the next five years based on government-wide adoption. By leveraging the existing infrastructure of EPA's Regulations.gov, the project avoids start-up costs.

Representatives from the founding partners met earlier this year to have a look at both the agency and requester sides of the portal. The partnership is unveiling the portal to agency FOIA professionals and requesters in a series of meetings and webinars this winter and will use their feedback as they continue

building and testing throughout the spring.

Here's how it would work: The portal would create a single online interface through which the public could submit requests to any participating federal agency, eliminating the need to find contact information for FOIA personnel at multiple agencies. (Of course, requesters can still make requests directly to the agencies they believe have the records they seek.)

Once a request is made, it would then be assigned a tracking number in the system that would allow FOIA requesters and agencies to track the status of the request in real time. Agencies could also generate e-mails to requesters through the system to seek clarifying information or send invoices for fees.

Documents ready for release would then be uploaded to a public website. These documents would be available not only to the requester, but to the general public. The portal also has the potential to streamline the consultation and referral process, which up until now has been largely a paper process, by allowing referrals and consults to take place within the system.

States have shown interest in doing something similar, perhaps even building off of the federal effort. Certainly information-sharing to make the FOIA process work better at any level of government is a great goal.

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