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# THE BRECHNER REPORT

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## Fl. transparency group wants tax incentive info published

TAMPA – State and local governments have offered \$33.8 million in incentives to 57 companies in the Tampa Bay area for the purpose of creating more than 7,000 new jobs, but little is known about the deals, according to Dan Krassner, executive director of Integrity Florida, a nonpartisan nonprofit research organization, according to the *Jacksonville Business Journal*.

“We would like to see the public told about every deal, and the results,” Krassner said, according to the *Journal*.

The group’s request for public records related to the deals resulted in one of the most comprehensive databases available online, the *Journal* reported.

According to the paper’s report,

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GOVERNMENT**

Enterprise Florida, the state’s economic development organization, said the list released to Integrity Florida by the Department of Economic Opportunity (DEO) included names of companies whose deals with Florida were supposed to be kept confidential.

Enterprise Florida CEO Gary Swoope said that releasing details of offers made to companies

but not yet finalized could jeopardize the state’s ability to compete with other states for job-creating projects, the *Journal* reported.

But Krassner says transparency could assist the public in learning more about what makes a deal successful or why certain deals don’t work, according to the paper.

Source: *Jacksonville Business Journal*

## Tampa considers ordinance banning electronic “peeping”

TAMPA – The Tampa City Council voted to place limits on how police use new downtown surveillance cameras.

In a unanimous vote, the council moved to safeguard residents’ privacy by expanding what has been known as the city’s window peeping law, according to the *Tampa Bay Times*.

If approved, the law would ban anyone, police included, from using a camera to secretly record someone in an indoor area out of public view.

Although Police Chief Jane Castor didn’t oppose the ordinance, she said the cameras, left over from the Republican National Convention, are

mounted on 25-foot poles and focused on public areas of downtown, the *Times* reported.

“These cameras are all aimed at the street level. There’s no looking into private areas,” Castor said, the *Times* reported.

Castor estimated that less than a dozen officers would be authorized to use the system, and all would be held to a “very high standard.”

The council also voted to hold a workshop in August 2013 to discuss the city’s experience with the cameras, according to the paper.

Source: *Tampa Bay Times*

**PRIVACY**

## Pastor files lawsuit, claims violation of 1st Amendment

TAMPA – A pastor of Smyrna Baptist Church has filed a lawsuit against the city of Pensacola, alleging officials violated his First Amendment free speech rights by prohibiting him from passing out flyers near the Pensacola PRIDE Festival in June, according to the *Pensacola News-Journal*.

Attorneys for the Memphis-based Center for Religious Expression filed the federal lawsuit on behalf

**FIRST  
AMENDMENT**

of pastor Bill Adams, claiming that Adams frequently goes to public venues to hand out literature explaining his Christian faith, according to the lawsuit.

Adams left the festival after he was told by police officials that he would be arrested if he continued to pass out the literature, according to the suit.

Adams is asking a judge to rule the officer’s actions were unconstitutional because they prevented him from exercising his First Amendment rights, according to the *News-Journal*.

He is also asking the judge to order government officials not curtail free speech in an attempt to prevent outbursts from those who may be offended, according to the paper.

Source: *Pensacola News Journal*

## City of Boynton Beach sued over its public records policy

BOYNTON BEACH – Open government advocates Joel and Robert Chandler have each sued the city of Boynton Beach after making public records requests.

When Joel Chandler visited the Boynton Beach Police Department in November, he was told to go to next door to City Hall to fill out a written request because the department lobby is only open on Wednesdays, according to the *Sun-Sentinel*. Robert Chandler placed a written request for a document with City Hall and

was forced to “jump through a series of hoops” to get the document after it wasn’t readily available, the *Sun-Sentinel* reported.

“It should have been as simple as here you go. It’s terribly impractical. Boynton can’t make up their own rules, and that’s precisely what they have done,” Joel Chandler said, according to the *Sun-Sentinel*.

The city maintains it does its best to fulfill Public Records Law requirements, according to the paper.

*Source: South Florida Sun-Sentinel*

## School Board agrees to settlement

LAKELAND – Lakeland resident Joel Chandler and the Polk County School Board have come to an agreement regarding the settlement of a public records lawsuit Chandler filed against the Board in August.

In the settlement, Chandler agreed to drop the lawsuit as well as several public records requests in exchange for the production of email correspondence between board member Kay Fields and former board member Frank O’Reilly, according to *The Ledger (Lakeland)*.

The Board must also pay Chandler’s attorneys at the firm of Thomas and LiCicero \$13,000 in legal fees and

reimburse Chandler \$668 for a records search that yielded 21 emails, *The Ledger* reported. In addition, the Board will be responsible for providing new training for workers involved in public records requests.

School Board attorneys insist there is no discussion of business in the hundreds of emails exchanged between the two board members, *The Ledger* reported.

The settlement agreement requires the district to establish a public records policy and to send key administrative and technical employees to state-sponsored training, according to the paper.

*Source: The Ledger (Lakeland)*

## Judge criticizes agency’s response to FOIA request

WASHINGTON, D.C. – A federal judge has ordered the U.S. Citizenship Immigration Services (USCIS) to release records requested

by a nonprofit group after it failed to respond

to a Freedom of Information Act (FOIA) request after almost a year.

The Washington-based group, the American Immigration Council (AIC),

requested the records after immigration attorneys raised concerns over the actions of officials with the Department of

Homeland Security (DHS).

The attorneys claim DHS officials interfere with noncitizens’ rights to

legal representation, including preventing attorneys from accompanying clients during inspections, limiting the scope of representation and refusing to accept

## N.Y. newspaper publishes names of handgun permit holders

NEW YORK – A New York newspaper recently published the names and addresses of handgun permit holders in two counties in the Hudson Valley area, north of New York City.

The story, titled “The gun owner next door: What you don’t know about the weapons in your neighborhood,” said the information came from a public records request following the Dec. 14 school shootings in Newtown, Conn., according to *The Associated Press*.

The gunman killed his mother before driving to an elementary school where he shot 20 first graders and six adults before shooting himself, according to *The AP*.

The publication of the data sparked criticism online, including that it put permit holders in danger because criminals have a guide to places they can steal guns. In 2006, Florida exempted licenses to carry concealed weapons from the Public Records Law, according to *The Florida Times-Union*.

*Source: The Associated Press, The Florida Times-Union*

**FREEDOM  
OF INFORMATION**

## Five years later, many agencies don’t comply with law

WASHINGTON D.C. – More than 60 percent of federal agencies’ Freedom of Information Act (FOIA) regulations do not meet legal requirements, according to a Washington-based research group.

Out of the 99 agencies the National Security Archive audited, the group found that 56 had not updated their FOIA

guidelines to meet the requirements of the OPEN Government Act of 2007, which created a new system of mandates for agencies responding to FOIA requests.

The Archive also found that 17 agencies had not properly posted their FOIA regulations on their websites, as required by the Electronic FOIA

Amendments of 1996, the report stated.

The Archive sent FOIA requests to those agencies, requesting copies of their regulations. After three months, only seven had responded, despite the law requiring a response within 20 business days, according to the Archive’s report.

*Source: National Security Archive*

## U.S. Senate Committee considers email privacy bill

WASHINGTON, D.C. – The U.S. Senate Judiciary Committee approved a privacy bill which would require police to obtain a search warrant signed by a judge before they can read a private citizen’s emails, Facebook messages, or other electronic communications.

Committee Chairman Sen. Patrick Leahy (D-Vt.) played key role in drafting

the legislation that would revise the Electronic Communications Privacy Act (ECPA), according to *FoxNews.com*.

Under the current ECPA, police need only a subpoena, issued without a judge’s approval, to read emails that have been opened or that are more than 180 days old.

The bill would require a judge to sign off on a warrant to obtain any email

from any time period from a third-party provider, according to the legislation.

“After decades of the erosion of Americans’ privacy rights on many fronts, we finally have a rare opportunity for progress on privacy protection,” Leahy said, according to *FoxNews.com*.

Source: *FoxNews.com, The Associated Press*

## State drops request to subpoena *Times-Union* reporter

JACKSONVILLE – Florida prosecutors have dropped efforts to compel a reporter to testify in the ongoing criminal case against a former government aide.

Prosecutors say reporter Matt Dixon was given a copy of a secret audio recording of a conversation between Lieutenant Governor Jennifer Carroll’s

chief of staff and former aide, Carletha Cole, who has been charged with breaking state law, according to *The Florida Times-Union*.

### REPORTER’S PRIVILEGE

Circuit Judge Frank Sheffield granted the newspaper’s request to block the subpoena. “Any information or knowledge possessed by Matt Dixon relating to

matters material to the Cole case was gathered for the purposes of writing news stories,” Sheffield wrote. “Information obtained by a journalist while newsgathering is protected from disclosure by qualified privilege under the United States Constitution, the Florida Constitution, the Florida Statutes, and the common law.”

Source: *The Florida Times-Union*

## Senate, Scott may shelve costly transparency software

TALLAHASSEE – A state contract regarding the use of a software program developed by a former House budget staffer and licensed by the state Senate under former Senate President Mike Haridopolos has expired.

The software program, Transparency 2.0, developed and patented by Spider Data Systems, provides legislators with the power to track such things as how much money lobbyists’ clients pull in from state business as well as the amounts the state and its contractors spend on travel

and office supplies, by cross-referencing budgetary, accounting, contracting and personnel data, according to the *Tampa Bay Times*. But the contract with Spider Data Systems expired Dec. 31, without being launched, despite costing \$4.5 million of taxpayer money.

While Gov. Scott’s office has not ruled out the possibility that Transparency 2.0 may be the platform for the governor’s budget tracking website, required to be maintained by

### OPEN GOVERNMENT

state law, the software and portions of the contract signed by the previous administration are still being reviewed by new Senate President Don Gaetz’s Office and the Senate Committee on Governmental Oversight and Accountability, as part of a larger transparency discussion, according to a spokesman for the senate committee. A decision is expected before the end of the upcoming legislative session in May.

Source: *Tampa Bay Times*

## Google transparency report details government requests for user data

WASHINGTON, D.C. – Google’s latest transparency report on how the government is asking for its data offers insight into the types of requests the technology giant receives. The report showed that 68 percent of the government requests for user data from July to December 2012 were through subpoenas. Though the giant has released similar reports since 2010, Google’s official blog post on the report said the results showed a “steady increase in government requests for our users’ data in the second half of 2012.”

The post also showed that the number of requests from government entities received during this time period – 21,389

– increased more than 70 percent from the same time frame in 2009, as Google’s services have expanded, according to *The Washington Post*.

The data also showed that 22 percent of the requests were submitted through Electronic Communications Privacy Act (ECPA) search warrants; with the remaining 10 percent submitted through court orders issued by judges under the ECPA or other processes, according to *The Post*. Google fully or partially complied with 88 percent of U.S. government requests for user data from the United States, according to the transparency report.

Source: *Google Transparency Report The Washington Post*

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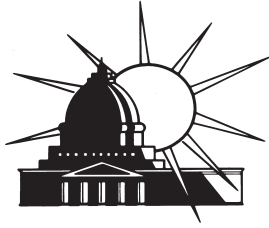
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## NSA: No one ensuring agencies comply with FOIA

In 2007, the Freedom of Information Act was updated so that FOIA requesters did not have to pay search fees if agencies did not respond to requests within the 20 working days required by the law.

In 2009, Jim Bensman filed a FOIA request with the National Park Service for topographical data to make his own digital maps. After 20 days had passed, the Park Service informed Bensman that their FOIA regulations still required him to pay an estimated \$1,387.20 in fees, despite the new FOIA law. Bensman went to court, and the Department of Justice (DOJ) defended the Park Service's illegal FOIA practice until the bitter end.

Fortunately, the judge ruled in Bensman's favor. The ruling noted that the agency's FOIA fee regulations "had not been altered since five years before Congress passed the 2007 Amendments substantially revamping several sections of FOIA."

### The Back Page By Nate Jones

To study why improvements to the FOIA were not being followed by agencies, the National Security Archive conducted its first

FOIA Regulations Audit.

FOIA regulations have been described at FOIA training conferences as the key tool FOIA officers must have at their desk to ensure they are processing requests correctly. Disturbingly, our audit found that the Park Service, part of the Department of the Interior, was not alone in its negligence.

Fifty-six agencies have not updated their Freedom of Information Act regulations since the OPEN Government Act of 2007; sixty-two agencies have not updated their FOIA regulations since U.S. Attorney General Eric Holder issued his March 19, 2009 memorandum on improved FOIA practices.

So who is responsible for ensuring that regulations are up-to-date and reflect recent improvements to FOIA? The DOJ's Office of Information Policy (OIP), at least in theory. But the DOJ has not updated its own regulations since 2003. Worse, the DOJ OIP recently proposed new regulations that would have been misleading to FOIA requesters about the existence of some documents, exempted online publications from being considered news media, and disqualified most students from receiving FOIA fee waivers. New regulations do not necessarily mean



Nate Jones

good regulations. After public outcry, DOJ OIP Director Melanie Pustay testified that she thought "people misinterpreted," "misconstrued," "didn't necessarily understand" the new regulations.

As Bensman's case shows, DOJ OIP's role as a constant defender of agency FOIA practices, even if they are illegal, leaves it ill-suited to serve requesters by pressuring agencies to update their regulations to reflect FOIA improvement. This means that the White House must play this role.

Lisa Ellmann, President Barack Obama's Chief Counselor for the Open Government Partnership, recently stated that she views Obama's second term as an opportunity to "chart a new course toward open and responsive government." She was quick to point out, though, that "FOIA is not my area of expertise." Apparently, it's no one's.

The White House has issued excellent proclamations and declaratory policies on FOIA. But, as the dreadful results of our Regulations Audit show, no one is exerting any effort to force agencies to implement these policies to improve FOIA. No one is even at the ship's wheel, much less charting a "new course."

The good news is that the White House *can* compel agencies to improve how they follow FOIA. The day after our 2010 FOIA Audit, Rahm Emmanuel and Bob Bauer sent a sharply worded memo to every federal agency instructing them to improve their FOIA shops. The next year, our 2011 FOIA Audit showed that half of all agencies had followed the memo's instructions.

Early in Obama's first term, Special Counsel for Ethics and Government Reform, Norm Eisen successfully played the role of FOIA enforcer, using a near constant barrage of emails to ensure that FOIA shops government-wide were improving. His departure to the Czech ambassadorship in early 2011 has left a void in the administration that has not been filled.

For Obama's inspiring FOIA visions to become concrete FOIA realities in his second term, he must install a new FOIA beat cop. That beat cop's first task should be to require that all agencies update their FOIA regulations to match the Obama administration's FOIA expectations. Americans should be able to turn their government's data into maps without being intimidated.

*Nate Jones is the FOIA Coordinator at the National Security Archive in Washington D.C.*