
THE BRECHNER REPORT

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Bills to improve Public Records Law pass

TALLAHASSEE – The Senate recently approved a bill that seeks to improve Florida’s Public Records Law. The bill is now pending before a House subcommittee.

The bill, titled SB 1648, would create mandatory Public Records Law training for employees that deal with public records requests.

SB 1648 would also eliminate the need for public records requests to be in writing, unless specified by statute, according to the bill. The bill also forbids public agencies from paying dues to organizations that do not allow the public to inspect their records.

The bill would allow agencies to charge

only the hourly amount of the lowest paid employee qualified to retrieve the records and no other additional fees for extensive records requests, according to the bill.

SB 1648 also applies to private contractors working for public agencies. These contractors would have to notify the agency they work for before denying a public records

request and in the event that they are sued for public records violations, according to the bill.

The bill extends attorney’s fees to hearings on reasonable fee determinations in public records suits.

SB 1648 also specifies when records may be “confidential” or “exempt,” the

paper reported.

“It’s a clean-up bill,” said Sen. Jeremy Ring, D-Margate, who chairs the Senate Government Operations Committee. “We’re codifying case law, providing certain definitions. Everybody knows about attorney’s fees, but it needs to be in statute that fees go to the prevailing party.”

SB 1648 is very similar to its House companion bill, HB 1151, the paper reported. The House Government Operations subcommittee approved HB 1151 and the bill is currently before another house subcommittee, according to the Florida House of Representatives website.

Source: *The News-Press (Fort Myers), Myfloridahouse.gov, Flsenate.gov*

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UF discloses portion of online company contract

GAINESVILLE – The University of Florida disclosed that it will pay \$186 million in consulting fees over 11 years to launch and manage UF Online, an online undergraduate program, The Gainesville Sun reported.

The Sun requested the university’s financial contract with Pearson Embanet, an online education company, to determine how much UF was paying Pearson to assist with the launch of UF Online, according to The Sun. Initially, UF released a heavily redacted copy of the contract, with the total amount UF would pay Pearson, Pearson’s portion of tuition fees and other fees Pearson may charge all blacked out.

After The Sun reported that UF did not disclose how much it would pay Pearson for the contract, UF officials sent The Sun another version of the contract with some payment information unredacted, according to the paper. UF officials also sent The Sun a business plan for UF Online to compare with the contract.

UF officials said information like instructional fees, performance indicators and criteria for those indicators remained redacted because they are trade secrets, which are exempt from Public Records Law, according to the paper. A paragraph

regarding tuition revenue, a table of tuition rates and other pricing was also redacted.

UF will pay Pearson \$9.5 million over the first five years of the contract, the paper reported. The rest of Pearson’s payments will come from other direct payments and a share of tuition fees.

The Florida Legislature gave the university \$15 million to start an online undergraduate degree program and a deadline of Jan. 1 to start the program, the paper reported. The university then hired Pearson to help implement the program.

Source: *The Gainesville Sun*

ACCESS
RECORDS

County considers new text message policy

PORT ST. LUCIE – The St. Lucie County Commission has proposed a policy to ban the use of text messages or instant messages to conduct county business unless the message can be properly stored, according to Scripps Treasure Coast Newspapers.

The policy would apply to all county

employees, the paper reported. It would also allow supervisors to access and monitor employees’ messages at any time.

The county is considering a program called MobileGuard to monitor and retain employees’ messages, according to the paper.

The program would cost the county \$500 a year.

The Port St. Lucie City Council implemented a similar policy after allegations that city officials may have deleted text messages containing city business, the paper reported. Orange County is also using MobileGuard to monitor county employees’ messages.

Source: *Scripps Treasure Coast Newspapers*

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State closes investigation into sports complex deal

CLAY COUNTY – The State Attorney’s Office for the 4th Judicial Circuit in Jacksonville closed an investigation of allegations that the Clay County Development Authority (CCDA) may have violated the Sunshine and Public Records laws, according to The Florida Times-Union.

The State Attorney’s Office released the case file because the criminal investigation was no longer active and the records were

no longer exempt, according to the paper. The closed case file does not indicate whether the CCDA violated the laws or whether any future action on the allegations will be taken, the paper reported.

The State Attorney’s Office and the Florida Department of Law Enforcement (FDLE) received complaints from county residents that the CCDA was meeting in private about a deal with Big League Dreams, a national sports facility

development company, to build a multi-sport complex, the paper reported. The residents also allege that CCDA members used their personal emails to discuss the deal.

The FDLE released a report stating that it didn’t proceed with its own investigation because the State Attorney’s Office was investigating the allegations, according to the paper.

Source: The Florida Times-Union

Reporter successful in lawsuit over excessive public record fee

COLLIER COUNTY – A circuit judge ruled in favor of a reporter who challenged a county clerk of court for imposing an excessive fee for public records, according to the Naples Daily News.

Naples City Desk reporter Gina Edwards filed a lawsuit against Dwight Brock, the Clerk of the Circuit Court of Collier County, for attempting to charge \$556 for documents, according to Edwards’s complaint.

Edwards alleged that the \$556 fee “constitutes a denial of access in violation of the Public Records Act.”

Circuit Judge Fred Hardt ruled that Edwards will get the documents from Brock for \$2 because the records were available electronically, according to the Naples Daily News.

Edwards argued that the fee was unlawful because she requested the records electronically and Brock can only charge the “actual cost of duplication” for the electronic records as mandated by Florida Statutes, according to the complaint.

Hardt ruled that Brock could only charge Edwards for downloading the records onto the disk, which “may not exceed the cost of the disk,” according to the judge’s order. The judge held that the 2 disks cost \$1 each, while Brock argued the 556 pages should cost \$1 per page, according to the order.

Source: Naples Daily News, Complaint by Gina Edwards, Gina Edwards & Associates v. Dwight Brock, Filing No. 1064376, Order Determining Fee For Public Records, Case No. 2014-000436-CA, Poynter

Media continue Dunn access case

JACKSONVILLE – Local media organizations have asked the state to pay their legal fees in their lawsuit over public records in the Michael Dunn case, according to Florida Today.

The Florida Times-Union and First Coast News requested over 185 hours of Dunn’s jail phone recordings, according to the state’s response to the motion for attorney’s fees. Both the circuit court and the 1st District Court of Appeal ruled that the phone recordings are public records, according to the response.

Florida law permits a party to obtain fees if an agency is found to have withheld public records unlawfully, according to Florida Today. The state acknowledged that the phone recordings are public records, but the media organizations must pay for the records, according to the state’s response.

The state said personal and other confidential information needs to be redacted from the recordings before they are released, which could take weeks and will cost an estimated \$6,000, Florida Today reported.

“First Coast News and our coverage partners at the Times-Union are committed to spend what it takes to protect the Freedom of Information rights shared by all citizens in our communities. Holding the powerful accountable is media’s role in a democracy; frustrating the Supreme Court’s intent to protect our rights will be met with vigorous defense,” said Eric Land, general manager of First Coast News.

Source: Florida Today, State’s Response to Intervenors’ Emergency Motion, Florida v. Dunn, No. 16-2012-CF-011572-AXXX-MA

Justice Dept. releases new guidelines on obtaining reporter records

WASHINGTON, D.C. – The U.S. Justice Department released new guidelines on obtaining reporter’s records, according to USA Today.

The new rules provide news organizations and reporters with notice when the government seeks reporters’ records for investigations, the paper reported. Reporters will be given timely notice of any requests for their records. Subpoenas, court orders and warrants can only be issued after authorization by the attorney general or other senior Justice Department officials, according to the paper.

REPORTER’S PRIVILEGE

The rules also provide that the Justice Department does not have to give advance notice if they determine that notice would jeopardize the investigation or threaten national security, according to the paper.

The new rules were prompted by the discovery that the Justice Department obtained records from telephone lines used by several reporters at The Associated Press and records from a Fox News reporter, the paper reported.

Source: USA Today

Commission cures secret ballot vote

MACCLENNY – The Macclenny City Commission recently held a curative vote to affirm a secret ballot vote of a new city commissioner, according to The Baker County Press (Macclenny).

The commission previously voted to fill the seat of a deceased commissioner by two secret ballot votes, each ending in a 2-2 tie, the paper reported. The commissioners circled one of two names on the ballot and passed them to the secretary, who read the votes aloud but did not announce who voted for whom. The tie was broken by a coin toss.

The Press notified city officials that the vote may have violated the Sunshine Law, the paper reported. The Sunshine Law requires that votes take place at a public meeting and a record is kept of the person who voted and their selection.

The city commission affirmed their votes at a following meeting, according to the paper. Each commissioner affirmed aloud who they selected in each vote. The coin toss did not have to be repeated, since it was done openly at the previous meeting, the paper reported.

There have not been any complaints, lawsuits or other investigations into the matter, according to the paper.

Source: The Baker County Press (Macclenny)

Ethics Commission asks for clarification on right to speak

JACKSONVILLE – Jacksonville’s Ethics Commission has asked Attorney General Pam Bondi to clarify Florida’s new law guaranteeing the public the right to speak at meetings that went into effect last year, according to The Florida Times-Union.

The commission wants to clarify how widely the law should be applied and if it should be applied in all the same circumstances as the Sunshine Law, the paper reported.

Since there are often many steps and meetings in a board or commission’s decision making process, the commission asked whether the public’s right to speak applies at every step of that process, according to the paper.

Commission vice chairman Joe Jacquot said in his letter to Bondi that the commission wants “to maximize the breadth of the public’s right to be heard,” the paper reported.

Source: The Florida Times-Union

Student journalists question compliance with records law

TAMPA – Student journalists at the University of South Florida (USF) are asking whether the university’s Student Government should be subject to Florida’s Sunshine and Public Records laws, according to The Oracle (USF).

The Oracle, USF’s student newspaper, filed a public records request for election grievances in student body elections but the request was “deemed invalid” because it was not made on the form required by Student Government rules, The Oracle reported.

USF’s Associate General Counsel Joanne Adamchak said that Student Government did not constitute a “public agency” that was bound by the Public Records Law, according to the paper.

Adamchak also told The Oracle that Student Government’s compliance with Florida’s Sunshine and Public Records law was “voluntary.”

Florida’s Public Records Law prohibits agencies from requiring specific formats for public records requests, The Oracle reported.

USF Student Government’s rules also differ from Florida’s Sunshine Law where they prohibit any outside member from recording public meetings, according to the paper.

Adamchak said that the question regarding whether student governments should be classified as public agencies may turn into an ongoing discussion, the paper reported.

Source: The Oracle (USF)

Florida Times-Union wins award

TALLAHASSEE – The Florida Times-Union received the First Amendment Foundation’s James C. Adkins/Sunshine Litigation Award for their involvement in three public records cases this year, according to The Florida Times-Union.

The Times-Union initiated a lawsuit to obtain value-added teacher information from the state of Florida, according to the paper. The 1st District Court of Appeal ruled the data was subject to Florida’s Public Records Law and that data was recently released.

The Times-Union sued the city of Jacksonville over private mediation talks regarding the city’s police and fire pensions, the paper reported. The court ruled the mediation settlement negotiations were subject to the Sunshine Law.

The paper was also involved in challenging the suppression of records in the Michael Dunn murder case, according to the paper. The court ruled that the media and the public had a right of access to the records and special hearings must be held to close court proceedings.

Source: The Florida Times-Union

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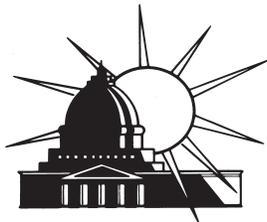
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Government leaders should end spin control culture

When the Valley Journals of Riverton, Utah, a suburb of Salt Lake City, wanted to know the time of the town's 2012 Easter egg hunt, they couldn't find out. The city barred the parks official from speaking to reporters without permission, and nothing, not even the Second Coming, would pry that information loose.

What Valley Journals Managing Editor Linda Petersen experienced is unfortunately all too common – and becoming more so – in Utah, Washington, D.C., and other government shops across the country.

Agencies at all levels, through aggressive and manipulative

The Back Page

By *Angela Greiling
Keane & David Cuillier*

tactics, are increasingly controlling what information the public receives, threatening the very foundation of democracy. This is more than just about Easter eggs and inconveniences for journalists. Growing message management by the government is something that concerns anyone who cares about holding elected officials accountable. The examples are too numerous to ignore.

Most federal agencies prohibit their employees from communicating with journalists unless the bosses have public relations staffers sitting in on the conversations. Contact is often blocked completely. When public affairs officers speak, even about routine public matters, they often do so confidentially in spite of having the title "spokesperson."

Reporters seeking interviews are expected to ask permission, often providing questions in advance. Delays can stretch for days, longer than most deadlines allow. Public affairs officers might send their own written responses of slick non-answers.

So why should the public care about journalists' frustrations? Why don't reporters just buck up and work harder to get the information? Many are, despite cutbacks in most newsrooms. But this isn't a battle between the press and government. It's about the information you receive to self-govern.

Unfortunately, because of these overzealous PR practices, the public won't find out about problems until it is too late.

A 2013 survey of government public affairs officers from throughout the country found that two-thirds believe it is their duty to monitor employee interviews with journalists. The study, by



*Angela Greiling
Keane*



David Cuillier

Kennesaw State University researcher Carolyn Carlson, also found that 40 percent had blocked reporters because they didn't like what the journalists wrote.

Passed off by agencies as "just the way it is," these restrictions are relatively new. In pre-9/11 times, credentialed reporters walked agency halls freely. They called staff at will, and bureaucrats weren't afraid of losing their jobs if they took the time for a conversation. The public got information it needed.

Reporters' unofficial talks with people inside government – going back long before Watergate – are essential to public understanding and prevention of abuse of power. The official story is never the whole story.

Limiting access to government information is a disservice to the citizenry. Muzzling government employees has the same effect as censorship. It hides problems that need to be exposed.

Journalists don't want that, citizens don't want that, and we sincerely hope the administration doesn't want that.

It is time for a significant cultural shift in American government, and that starts at the top.

We urge President Obama, governors, mayors, school superintendents, and all other government leaders to reverse this troubling trend by pledging to create open agency information cultures.

Allow journalists and the public to contact government employees directly for information, without PR specialists intervening. Allow journalists to interview government employees without a public relations specialist present. Pass a federal shield law, stronger state shield laws and stronger whistleblower protection laws.

All of these actions will improve public discourse and democracy. Citizens should expect nothing less of their public servants – to foster knowledge, credibility and openness, not spin, mistrust and secrecy. The time for change is now, before it is too late.

Hunts are for Easter eggs, not government information.

Angela Greiling Keane is the 2013 President of the National Press Club. David Cuillier is the Director of the University of Arizona School of Journalism and the President of the Society of Professional Journalists.