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# THE BRECHNER REPORT

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## Florida Supreme Court issues online access order

TALLAHASSEE – The Florida Supreme Court released an administrative order structuring a plan for public access to online court records.

The court had previously imposed a “moratorium on access to electronic court records to address concerns about sensitive and confidential information contained in these records,” according to the order.

The order outlines a statewide pilot program that each county will participate

in, according to the order. Each county clerk of court must get approval from the Florida Courts Technology Commission and comply with all access requirements in a 90-day monitoring period.

The court also established a standards and matrix, which provides varying levels of access to court records depending on a user’s credentials, the order stated. The standards and matrix were based on the current online access

program in Manatee County.

The court supervised the Manatee County program from 2007 to 2011 and determined that the program was successful in granting access while protecting confidential information, according to the order.

The public will have access to a “replicated and redacted” version of the record, according to the standards outlined in the order.

*Source: Administrative Order No. AOSC14-19, Supreme Court of Florida*

### ACCESS RECORDS

## Public universities lack uniform records policy

GAINESVILLE – A records request sent to Florida’s 11 public universities revealed that the schools do not have a consistent public records policy, The Gainesville Sun reported.

The Sun made requests at each campus police department for all sexual assault records from 2010 to 2013, according to the paper. The Sun wanted to see how each department handled the same request.

The Sun found that each university had its own records policy, the paper reported. The universities also varied greatly in the time they took to respond to the requests and the amount, if any, they charged for the requests.

Five universities responded to The Sun’s requests within three weeks and did not charge a fee for the records, according

to the paper. The University of Florida, New College of Florida, Florida Gulf Coast University and the University of West Florida handed over the records for free.

Four universities quoted a range of \$6 to almost \$140 for their records and refused to release the records without first receiving the payment, the paper reported. Florida International University said it would charge The Sun \$139.56 to gather and review the documents and redact any confidential information.

The University of North Florida estimated it would cost \$5.85 for their records, according to the paper. University

of Central Florida said it would charge \$42.36 and Florida Atlantic University said it would charge \$88.81.

Agencies are allowed to charge fees for records requests if producing the documents involves “extensive use” of time or technology, The Sun reported.

The Sun hadn’t received records from Florida State University at the time of their report, three weeks after the initial request, despite acknowledgement of the request, the paper reported.

Florida’s Public Records Law mandates that agencies produce records in a reasonable time under reasonable circumstances, according to the paper.

*Source: The Gainesville Sun*

### ACCESS RECORDS

## Court rules EDC subject to Public Records Law

BREVARD COUNTY – A circuit court judge ruled that most records of the Economic Development Commission for Florida’s Space Coast (EDC) are subject to Florida’s Public Records Law, according to Florida Today.

Circuit Judge John Moxley Jr. ruled that the EDC’s documents are public records because the

commission performs the government function of developing the local economy, the paper reported.

The ruling came after the lawsuit initiated by Brevard County Clerk of Court Scott Ellis when the EDC would not produce some files Ellis requested related to its business with technology company BlueWare Inc., according to the paper. The EDC argued

that it was a private agency and not subject to the Public Records Law.

Certain exemptions still apply to the EDC’s documents, the paper reported. Confidential information like trade secrets and business information from companies in the initial stages of negotiations with the EDC are exempt.

The EDC said it will consider appealing Moxley’s ruling, according to the paper.

*Source: Florida Today*

### ACCESS RECORDS

## City sues after records request

SARASOTA COUNTY – The City of North Port filed a lawsuit against paralegal Michael Barfield in response to a public records request amidst an investigation into police misconduct, according to the Sarasota Herald-Tribune.

Barfield requested a list of police officers who are currently on administrative leave, according to the City of North Port's complaint. The city then filed a lawsuit against Barfield and two unnamed officers to determine whether the officers' names were exempt from disclosure, according to the complaint.

The city claimed the names of the two officers were exempt because they were the subject of an ongoing investigation, according to the complaint. The city then

released the names of the two officers, according to the paper.

One of the named officers, Ricky Urbina, shot and killed himself after a warrant for his arrest was issued, the paper reported. The other officer, Melanie Turner, was arrested.

The lawsuit is pending, and the administrative investigation is still ongoing. Three more officers have been suspended, the paper reported.

The investigation stems from accusations that two North Port Police officers sexually assaulted a woman at a party, the Herald-Tribune reported.

*Source: Sarasota Herald-Tribune Complaint, City of North Port v. Michael Barfield*

## FDLE agrees to nondisclosure

TALLAHASSEE – The Florida Department of Law Enforcement (FDLE) signed a non-disclosure agreement with the Florida-based manufacturer of cellphone monitoring devices, according to the Tallahassee Democrat.

The agreement prohibits the FDLE from disclosing any information to the government or the public without a court order and written consent from manufacturer Harris Corp., the paper reported. The FDLE and Tallahassee Police Department use Stingrays, a device that functions as a fake cell tower to intercept calls.

Stingrays allow law enforcement to monitor communications and locate phones within a matter of feet, regardless of their location, according to the paper. Since 2008, the FDLE has placed about 15 orders with Harris, but the FDLE said purchase agreements and other information on how the devices operate and what they are used

for are exempt from public records, the paper reported.

The Democrat recently reported that the FDLE had an agreement with the FBI not to disclose any information about Stingrays, according to the paper. Following that story, FDLE Commissioner Gerald Bailey contacted the paper and said the FDLE had signed a non-disclosure agreement with Harris, which he was not previously aware of.

The nondisclosure agreement does not include any provision that addresses public records requests, the paper reported.

The FDLE said the nondisclosure agreement does not affect the way they handle information, according to the paper.

Similar nondisclosure agreements and cellphone monitoring technology have been widely criticized by the American Civil Liberties Union, the paper reported.

*Source: Tallahassee Democrat*

## Media appeals exclusion from jury selection

TALLAHASSEE – The 1st District Court of Appeal heard oral arguments regarding the media's exclusion from jury selection in the Michael Dunn murder case, The Florida Times-Union reported.

Circuit Judge Russell Healey did not allow media in the courtroom during the first day and part of the second day of jury selection and allowed the parties to select a jury on the third day when the courtroom was closed, according to the paper.

Healey ruled that the media didn't

have the right to be in the courtroom because audio of the jury selection could be heard in a media overflow room, the paper reported. Healey also ruled that media representatives had agreed to stay out of the courtroom during jury selection.

The Florida Times-Union and First Coast News objected to staying out of the courtroom, according to the paper.

Assistant Attorney General Tricia Meggs Pate said that Healey let the media

## Newspaper seeks federal office records on renovation

WASHINGTON, D.C. – The Washington Examiner filed a suit against the Consumer Financial Protection Bureau (CFPB) for withholding documents regarding the bureau's office renovations, the Washington Examiner reported.

The Examiner is seeking 335 pages of financial and planning documents on the CFPB headquarters \$139 million renovation project, according to the paper. Most of the documents that the CFPB released have been heavily redacted.

The CFPB relied on two exceptions to avoid disclosing documents, according to the Examiner. The CFPB stated that the documents were exempt because they were part of the deliberative process and that the requests were "an unwarranted invasion of personal privacy."

The lawsuit asks the CFPB to put together a list of the types of documents it withheld and show how publicizing those documents would injure a party, called a "Vaughn index," the paper reported. The lawsuit also asks the court to review the CFPB's search methods and set a date for the release of documents.

"We shouldn't have to go to court to get them, but it's important to make the point that the American people have just as much of a right to know what CFPB is doing with their tax dollars as they do their local dog catchers," said Mark Tapscott, executive editor of the Examiner.

*Source: Washington Examiner*

## COURTS

into the courtroom when he found out they did not agree to stay out, the paper reported. Pate also said the situation would not happen again.

A jury convicted Michael Dunn of three counts of second-degree attempted murder and one count of shooting bullets into a vehicle, but could not decide on a first-degree murder charge, the paper reported. Dunn will be retried on the murder charge, according to the paper.

*Source: The Florida Times-Union*

## Newspaper sues nonprofit for financial records

MACCLENNY – The Baker County Press filed suit against a nonprofit counseling center that closed last year, according to the newspaper.

The Press seeks financial records from Baker County Counseling Services (BCCS) to determine why they abruptly shut down, the paper reported. The Press believes the documents should be subject to Florida's Public Records Law because BCCS ran court-ordered programs on behalf of the county and received county funding.

BCCS closed after it lost a bid for an annual contract to provide mental health and substance abuse treatment for the county, according to the paper. BCCS closed its doors approximately two weeks before it had originally planned to close.

BCCS board members would not disclose why the center closed suddenly, the paper reported.

The Press also named an accounting firm, Lyons & Lyons, in the suit because the paper believes BCCS gave the accounting firm all their financial records before closing.

Source: *The Baker County Press (Macclenny)*

## State Attorney's Office finds EDC not subject to records law

WINTER HAVEN – The State Attorney's Office in Bartow determined that the Winter Haven Economic Development Council is not subject to Florida's Public Records Law, according to *The Ledger (Lakeland)*.

The office investigated a complaint from two citizens about the council, the paper reported. The office released a report stating that although the council receives public funding, it is not subject to the Public Records Law.

The State Attorney's Office came to this conclusion because city

representatives do not have voting privileges, the council does not perform a function of city government and the council does not use city facilities, according to the paper.

"I understand why you need public records," said council president Ingram Leedy. "But sometimes you can't get things done and look at options without everyone knowing your business."

The Winter Haven City Commission gives the Economic Development Council \$150,000 annually, the paper reported.

Source: *The Ledger (Lakeland)*

## "Stand your ground" amendment would limit records access

TALLAHASSEE – The Florida House of Representatives adopted an amendment to Florida's "stand your ground" law to limit access to court documents for those who successfully invoke the law, according to the *Tampa Bay Times*.

The amendment allows defendants to have their records expunged if they are found to have used legally justifiable force, the paper reported. Once a defendant's charges are dropped in a "stand your

ground" case, the defendant may apply for a "certificate of eligibility" to have the records associated with that case expunged.

This amendment would limit access to court records in cases where the defense was used successfully, the paper reported.

The bill passed in the House as amended, according to the Florida House of Representatives website.

Sources: *Tampa Bay Times*, <http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=51209>

COURT RECORDS

## Pensacola Chamber plans to move out of Sunshine

PENSACOLA – The Greater Pensacola Chamber recently took another step toward becoming a private entity that is no longer subject to Florida's Sunshine and Public Records laws, according to the *Pensacola News Journal*.

The chamber unanimously authorized CEO Jerry Maygarden to present it with a new organizational structure to vote on in July, the paper reported.

One option for reorganization would involve creating a Community Economic Development Agency dedicated solely to spending tax dollars to improve the local economy, Maygarden told the paper. The other option would involve handing

over all economic development functions to the existing Pensacola-Escambia Development Commission, Maygarden said.

Currently, the chamber receives about \$827,000 a year in taxpayer funds to promote economic development, according to the paper. The chamber is subject to the Sunshine Law because it receives this money, the paper reported.

If either proposal is accepted, the chamber would focus entirely on the private Greater Pensacola Chamber Foundation, which currently functions as a community advocate and is entirely funded by private donations, the paper reported.

Source: *Pensacola News Journal*

ACCESS MEETINGS

### THE BRECHNER REPORT

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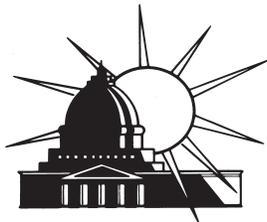
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## Investigative reporting crucial for community

When readers of The Ledger told us we needed to start doing some investigative reporting, we wondered what they were talking about. Did they miss the series that brought down the executive director of our local Crimestoppers, his daughter and almost every board member? Were they not paying attention when we followed that up with a report investigating the city of Mulberry's finances – one that led to the city manager and public works director getting arrested, then fired?

Those focus groups were the genesis of our investigative reporting team – two reporters and an editor – and our goal to identify questionable practices in the county.

That goal seemed daunting at first, but it became easier to attain once we started the process and started getting more and more phone calls tipping us off to unethical or illegal practices in Polk.

### The Back Page By Lenore Devore

For instance, we found out the School Board required everyone attending its meetings to show ID. The Lakeland Fire Department told residents it wouldn't give them public

records until those asking signed a piece of paper. And the city of Winter Haven? It decided it didn't really need to keep written minutes of meetings because it has audio recordings.

All three changed their practices. They won't say they did it to fix illegalities The Ledger pointed out, but the changes coincided with our front-page stories.

After all that came the now-well-known "cat-and-mouse" comment.

Lakeland Police Chief Lisa Womack said she played "cat-and-mouse" games just two years into her three-year tenure at Lakeland Police Department. The chief resigned in late January, planning on leaving May 1. Her departure was moved up to mid-February after she became the target of an internal investigation regarding her hiring practices. She's still on an automatically renewable consulting contract.

Her "cat-and-mouse" comment was the straw that broke the Newsroom's back. It came a year after she met with Ledger editors and reporters, along with representatives from our TV partner Bay News 9, to discuss our difficulties obtaining public records and basic information from the Police Department's PIO – her friend. She



Lenore Devore

wouldn't let us talk about the PIO, saying she was "off the table" during the discussion. But she did tell us -- three times -- that she didn't care what the law said concerning releasing the names of those who had died, she was going to do what she thought was right for the community.

And it came a month after we had been trying to get public records involving a suspect in shooting.

It ended with a story on The Ledger's inability to pry records from LPD, even records we had from another source – the jail.

The story caught the attention of State Attorney Jerry Hill, never one to shy from upholding the First Amendment. He's been through this before, prosecuting School Board attorneys, city officials and others who don't adhere to Florida's Sunshine and public records laws. Five minutes into a phone call with me the morning after the LPD story ran, complete with the cat-and-mouse quote, he said he might have to call a grand jury to investigate. The big question: Would we testify about our experiences?

As a graduate of the University of Florida's College of Journalism, I learned that you don't "participate" in stories. On the other hand, our reporters were increasingly disabled trying to do their jobs, and the story we were working on was critical: We were trying to show that if LPD had been doing its job, the person suspected in a shooting that left an elderly man critically injured would have already been in jail. I decided we would testify as to our experiences, and three weeks later, five reporters and I did, along with a TV cameraman and a radio reporter.

The state attorney and his office didn't rely on our testimony alone. It sent three undercover officers to the Lakeland Police Department to request various records. None got what he asked for.

The State Attorney's Office and grand jury investigated for about a month, then issued a presentment Feb. 14. It remained sealed by court order until Dec. 13, when the 2nd District Court of Appeal ordered it released. The city prepared a response more than twice as long as the presentment, disputing almost every aspect.

Our weekly reports continue, as does our relentless push to get the city of Lakeland to practice the "transparency" it preaches.

*Lenore Devore is the editor of The Ledger and this year's Brechner Center for Freedom of Information Award winner. She started the investigative reporting team 3 years ago.*