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# THE BRECHNER REPORT

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## Indictments issued in expressway investigation

ORLANDO – A grand jury issued three more indictments in the Orlando-Orange County Expressway Authority investigation, according to the Orlando Sentinel.

Board member Scott Batterson, former state Rep. Chris Dorworth and Rebekah Hammond, Dorworth's girlfriend and government liaison for the Florida Department of Transportation, were charged with violating Florida's Public Records Law, the paper reported.

The indictment alleges that Dorworth and Hammond acted as "conduits" between expressway board members, including Batterson, to discuss board matters in private, according to the paper.

Batterson, Dorworth and Hammond were charged with one count of violating the public records law, the paper reported.

Violating the law is a misdemeanor and offenders can face up to a \$500 fine and 60 days in jail.

Batterson was also indicted by the grand jury on bribery charges stemming from the investigation, according to the paper. He allegedly offered an expressway contract to a consultant in exchange for hiring friends. Gov. Rick Scott suspended Batterson after he was indicted, according to the paper.

Former board member Marco Pena pleaded guilty to violating Florida's Sunshine Law and then testified before the grand jury on the day that it issued indictments against Batterson, Dorworth and Hammond, according to the paper.

State Attorney Jeff Ashton said the grand jury believes the expressway authority was run by a "culture of corruption," the paper reported. Ashton also said the grand jury thinks the punishment for Sunshine law violations is "too lenient."

The three public records indictments are expected to be the last indictments issued in the nine-month investigation, according to the paper.

The investigation into the expressway authority began when former Director Max Crumit quit and alleged that Batterson told him privately he had enough votes to fire him, the paper reported. The board voted 3-2 to seek a successor for Crumit.

*Source: Orlando Sentinel*

## OPEN GOVERNMENT

## Florida files lawsuit against Veteran Affairs Dept.

ST. PETERSBURG – State officials filed a lawsuit against the Department of Veteran's Affairs alleging that the VA blocked their access to inspect hospitals and failed to respond to FOIA requests, according to The Associated Press.

The state Agency for Health Care Administration (AHCA) filed the

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lawsuit against the VA in federal court in Tampa in the midst of nationwide concerns of substandard care at VA hospitals, the AP reported.

AHCA alleged that they attempted to inspect Florida's VA facilities in April and May and were blocked by VA officials each time, according to the AP. AHCA also

alleged that the VA has not responded to any FOIA requests.

VA officials argued that they are not subject to state laws because they are a federal agency, the AP reported.

AHCA sought access to VA hospitals and submitted FOIA requests in an effort to confirm complaints of poor care, long wait times, and allegations of secret waiting lists, according to the AP.

*Source: The Associated Press*

## ACCESS RECORDS

## ACLU sues Sarasota for cell monitoring records

SARASOTA – The American Civil Liberties Union wants to stop the city of Sarasota and the Sarasota Police Department from disposing of cellphone records gathered from cellphone monitoring devices, according to the ACLU's motion.

The ACLU is seeking records about the Sarasota Police Department's use of stingray devices that act as cellphone towers, which allow law enforcement officials to track cellphone locations, text messages and calls sent or received on the phone. The

Associated Press reported.

The ACLU alleged that the records had been transferred to a federal agency after receiving a public records request. The motion seeks to prevent additional records from being transferred.

The ACLU argued in the motion that records about stingray use should be subject to Florida's Public Records Law and the records are judicial court records.

The ACLU asked the court to take the records into custody until it can determine whether the records are exempt from disclosure, according to the motion.

*Source: The Associated Press, American Civil Liberties Union of Florida, Inc., and Michael Barfield v. City of Sarasota and Michael Jackson, Motion for Temporary Injunction and Incorporated Memorandum of Law, Filing No. 14355865*

# OPEN GOVERNMENT

## Blind trust case filed with Florida Supreme Court

TALLAHASSEE – An emergency lawsuit challenging the constitutionality of politicians' use of blind trusts for their financial assets was filed with the Florida Supreme Court, according to the Bradenton Herald.

The lawsuit challenges a law that allows elected officials to place their personal financial assets into blind trusts, the paper reported. The trusts let politicians declare a total net worth without having to disclose the values of stocks and other investments.

Jim Apthorp, former chief of staff to Gov. Reubin Askew, is the plaintiff in the lawsuit. Apthorp's lawyer, Talbot "Sandy" D'Alemberte, told the paper

they want to prevent the secretary of state from accepting qualifying papers from candidates who have assets in blind trusts.

D'Alemberte said the lawsuit is not an attack on Gov. Rick Scott and was not politically motivated, the paper reported.

The lawsuit requests emergency action by the Supreme Court because the deadline for candidates to file qualifying papers, including financial documents, is rapidly approaching, according to the emergency petition to the Supreme Court.

Attorney General Pam Bondi asked the Florida Supreme Court to dismiss the lawsuit. Bondi argued that blind trusts promote the purpose of Florida's

Sunshine Law because they avoid conflicts of interest, according to The Florida Times-Union.

Lawyers for the House and Senate wrote in a brief that blind trusts eliminate conflicts of interest and any opportunity for politicians to advance their personal interests because the politicians do not have knowledge of their specific assets in the trust, The Times-Union reported.

The petition argued that the information hidden from politicians in blind trusts is also hidden from the public.

*Source: Bradenton Herald, The Florida Times-Union, James Apthorp v. Ken Detzner, Emergency Petition*

## Charges against Port St. Lucie mayor dismissed

PORT ST. LUCIE – The charges against Port St. Lucie Mayor JoAnn Faiella for allegedly violating Florida's Public Records and Sunshine laws have been dismissed, according to the St. Lucie News Tribune.

Martin County Judge Kathleen Roberts dismissed the two civil charges against Faiella because of a procedural rule, the paper reported. Roberts said

both charges had expired under the criminal procedural rules of speedy trial.

Although Faiella was charged with noncriminal offenses, the first judge to hear the case determined that the rules of criminal procedure would apply, according to the paper. The first and second judges in the case recused themselves, and no decision was made regarding whether the rule of speedy trial

applied in this case.

Faiella was charged with deleting text messages from her city-issued phone and discussing city business with a city council member outside of a public meeting, the paper reported. Council members Ron Bowen and Shannon Martin were also charged during the same 10-month investigation.

*Source: St. Lucie News Tribune*

## Group sues FDOT for records

TALLAHASSEE – The Florida Department of Transportation is facing a lawsuit for allegedly failing to respond to a public records request, according to the Tallahassee Democrat.

Safety Research & Strategies Inc. requested records on the FDOT's use of guardrail systems on Florida's highways, according to Safety Research & Strategies' complaint. The Massachusetts-based organization requested the records to determine whether the guardrails are defective and may put Florida drivers at risk.

The FDOT gave Safety Research & Strategies 13 of the requested documents and said it would produce a CD with over 1,000 emails, the paper reported.

The FDOT told Safety Research & Strategies that Trinity Industries, the guardrail vendor, needed to review the additional documents to determine

whether they are exempt from disclosure, according to the paper.

Safety Research & Strategies' Melanie MacDonald asked the FDOT to provide the statutory exemptions that may be applicable to the documents, the paper reported. The complaint alleged that the FDOT did not reply with any applicable exemptions. The initial request was made on February 10, according to the complaint.

None of the emails in response to Safety Research & Strategies' request were marked as trade secrets, according to the lawsuit. Trade secrets are exempt from disclosure under Florida's Sunshine Law, according to the paper. The law also requires agencies to cite specific statutory exemptions when responding to requests.

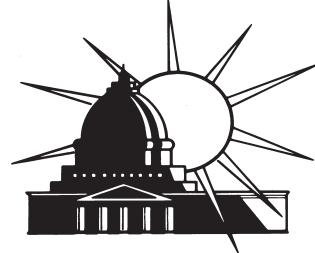
*Source: Tallahassee Democrat, Safety Research & Strategies, Inc. v. Florida Department of Transportation, Complaint, Filing No. 13829638*

## Legislative special edition featured in August issue

A wrapup of the 2014 legislative session will appear in the August issue of The Brechner Report.

The wrapup will include summaries of the new laws which affect the public's right to know under the state's public record and open meetings laws.

*Copies of the new laws are available at the Florida Legislature's website ([www.leg.state.fl.us](http://www.leg.state.fl.us))*



# ACCESS MEETINGS

## Council will not pay legal fees

PORT ST. LUCIE – The Port St. Lucie City Council voted against paying for Councilman Ron Bowen's defense against allegations that he violated Florida's Sunshine Law, according to the Port St. Lucie News Tribune.

The council voted 4-1 to deny Bowen's request for the city to reimburse his legal fees stemming from a criminal charge of violating the Sunshine Law, according to the paper.

Bowen's attorneys negotiated a plea deal with the state attorney's office that substituted the criminal charge with a civil charge if Bowen accepted responsibility for breaking the law, the paper reported. Bowen

paid a \$300 fine and \$50 in court costs.

"I accept full responsibility for my miscommunication, although I never intentionally violated the law," Bowen said during a hearing.

Councilwoman Michelle Berger told the paper Bowen was acting outside of his official duties when he was charged with the violations. Bowen's attorney said he was performing his official duties, the paper reported.

Gov. Rick Scott suspended Bowen when he was initially charged, but reinstated him when the case concluded, according to the paper.

*Source: St. Lucie News Tribune*

## Closed meeting raises questions

BOCA RATON – Florida Atlantic University officially announced the winner of student government after the election board met privately, which raised questions about Florida's Sunshine Law, according to The Boca Raton Tribune.

Michael Cepeda and Thomas DeMaio were elected student government and vice president after problems with the voting systems and election complaints delayed the results, the paper reported.

The student government election board met privately and gave the candidates time to file election complaints, according to the paper. That private meeting may have violated Florida's Sunshine Law

because no notice was provided, the paper reported.

FAU's Associate Dean of Students, Terry Mena, told the paper the election board meeting did not violate the Sunshine Law because they were not "voted on" meetings. However, the absence of a vote doesn't exempt a meeting from the law, according to Sandra Chance, executive director of The Brechner Center for Freedom of Information.

FAU received more election complaints this year than ever before, which caused a delay in the official results, the paper reported.

*Source: The Boca Raton Tribune*

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Brechner Center for Freedom of Information  
3208 Weimer Hall, P.O. Box 118400  
College of Journalism and Communications  
University of Florida, Gainesville, FL 32611-8400  
<http://www.brechner.org>  
e-mail: brechnerreport@jou.ufl.edu

Sandra F. Chance, J.D., Exec. Director/Exec. Editor  
Sarah Papadelias, Editor  
Alana Kolfrath, Production Coordinator

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## Judge closes redistricting trial

TALLAHASSEE – A judge closed a trial to the public concerning Florida's voter redistricting plans on the eighth day of the trial, according to the Orlando Sentinel.

Leon Circuit Judge Terry Lewis asked the public and the press to leave the courtroom during the testimony of Republican politicians about their respective roles in influencing the redistricting map, the paper reported.

Lewis closed the trial after the Florida Supreme Court ordered that the emails and other documents produced by Republican consultant Pat Bainter must be disclosed in court, according to the Democrat. The Florida Supreme Court ruled, however, that the documents could be presented

### COURTS

only if the courtroom was closed, according to the Tampa Bay Times.

Many media organizations objected to leaving the courtroom, according to the Democrat.

"This is an extremely important case, and if the testimony or evidence plays a part in the court's determination, that is something the public should know," said Rachel Fugate, lawyer for the Orlando Sentinel.

The case stems from an accusation from the League of Women Voters and several other parties that Republican lawmakers illegally influenced the redrawing of voter district maps in 2012, the Democrat reported.

*Source: Tallahassee Democrat, Tampa Bay Times*

## Supreme Court will not hear comment case

DELTONA – The Florida Supreme Court refused to hear a case regarding public comments at a Deltona City Commission meeting, according to The Daytona Beach News-Journal.

Edgewater Citizens Alliance for Responsible Development, Inc. and citizen Barbara Herrin sued the City of Deltona for allegedly denying public comment during a city commission meeting on a development plan, the paper reported.

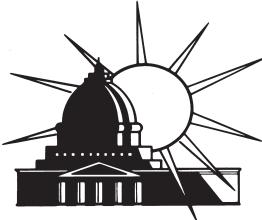
Edgewater Citizens Alliance and Herrin argued that prohibiting citizens from speaking on matters that the Commission is considering violates Florida's Sunshine Law, the paper reported.

The City of Deltona won in the lower court proceedings.

The City Commission changed its comment policy since the lawsuit and now asks for public comment on matters before voting, the paper reported.

*Source: The Daytona Beach News-Journal, Barbara J. Herrin, et al. v. City of Deltona, Case No. SC13-2003*

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## Media want prompt, equal access to court e-records

In March, the Florida Supreme Court set standards for access to electronic court records. Administrative Order 14-19 lifted the decade-long moratorium that prohibited clerks of court from providing the public with remote, internet access to court records. The Court amended its Order in May, outlining the process by which the new system of remote access would be implemented. However, the effects of the moratorium linger and continue to affect progress toward a more transparent and accessible court system.

In particular, an exception the Court created during the moratorium that allows clerks to provide preferential, remote (and often free) access to members of The Florida Bar to all non-confidential court records still exists in about one-third of

Florida's counties. Favoring attorneys generally by providing them with better access to court records than that provided the public is unconstitutional.

The statewide delay issues in providing access to court records are equally important. Manual redaction and inspection of court records by clerks cause delays. Confidentiality issues and e-filing seem to have taken precedence over the constitutional right of access to Florida court records.

These issues have become even more salient as the Court considers amending Rule of Judicial Administration 2.420, the rule governing access to court records, to conform to Amended Administrative Order 14-19.

In June, a coalition of 15 media organizations submitted a written comment to the Court in response to the Court's call for comment on proposed changes to the rule. The media organizations asked the Court to end the attorney preference immediately and to remind clerks that timely access to electronic court records is not merely a goal to strive toward, but rather a constitutionally required standard.

For example, the media organizations explained to the Court that more than twenty Florida counties have implemented an attorney preference system and continue to do so even after the



*Carol J.  
LoCicero*



*Mark R.  
Caramanica*

lifting of the moratorium. The favoring of attorneys by providing them with better access to court records than that provided the public should be stopped immediately because it creates special access privileges for attorneys.

The current attorney preference allows a subset of the population – members of The Florida Bar – virtually instant access to court records from their personal computers – often at no cost. To exercise those same rights, a non-attorney citizen must incur costs of up to \$1 per page for paper copies of electronic court records, be forced to travel often significant distances to physical courthouses, and otherwise endure delays in obtaining records.

The media organizations request the Court either immediately halt the preference and put Florida attorneys on the same footing as the public or provide remote, internet access to the public equal with that provided Florida attorneys.

The media organizations also ask the Court to address the current, systemic delays in access to court records experienced statewide. The Florida constitution and related case law mandate timely access to judicial records. But these requirements have taken a backseat to enacting statewide e-filing and to fears about protecting confidential records.

So the media organizations ask that the Rule expressly require "prompt" access to court records. Clerks should be reminded that timely access to court records is a high-priority and a current obligation and that swift transition to remote access is a goal. In the interim, emailing court records to requesters would help alleviate existing delays and disparities in the current system.

Access to judicial records is a fundamental right in Florida. After a decade of operating under the moratorium, the Court should take this opportunity to uphold the public's constitutional and statutory rights of prompt access to judicial records.

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*Carol Jean LoCicero is a partner and Mark R. Caramanica is an associate in the Tampa office of Thomas & LoCicero PL. The firm represents the media coalition that submitted a comment to the Florida Supreme Court. Firm attorneys Dana J. McElroy, Rachel E. Fugate and Ana-Klara H. Anderson also contributed to the comment.*