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# THE BRECHNER REPORT

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## Judge ruled State Attorney broke records law

JACKSONVILLE – A judge ruled a State Attorney’s Office violated Florida’s Public Records Law, according to The Florida Times-Union.

Judge Karen Cole ordered State Attorney Angela Corey’s office to pay Curtis Lee’s legal fees for his lawsuit against the office, the paper reported.

Corey’s office sent investigators to Lee’s home after Lee asked the office

to investigate Jacksonville’s Police and Fire pension fund, according to the paper. Investigators told Lee to stop contacting the office.

“I was very angry with the unannounced visit of the investigators,” Lee told the paper. “I’m entitled as a citizen to complain, and I’m entitled as a citizen to request public records. ... Even if the government entity finds you are a pest, they are still required

to give you public records.”

Cole ruled Corey’s office violated the law by refusing to accept cash and debit cards for records requests, the paper reported. The office required the public to pay with checks or money orders, which Cole found was an unlawful burden on citizens.

Cole also ruled Corey’s office violated the law by taking too long to respond to records requests, according to the paper.

*Source: The Florida Times-Union*

**ACCESS  
MEETINGS**

## Judge subpoenas Scott emails

TALLAHASSEE – A circuit judge ruled against Gov. Rick Scott in a lawsuit over his administration’s failure to comply with the state’s Public Records Law, according to The Associated Press.

Chief Circuit Judge Charles Francis granted attorney Steven Andrews’s request to subpoena records from Google and Yahoo, the AP reported. Andrews said he wanted information

from private email accounts he believes were used to circumvent Florida’s Public Records Law.

The subpoena requires Google and Yahoo to produce information regarding who created the accounts and when,

according to the AP. Francis did not mandate that the companies turn over any actual emails.

Florida’s Public Records Law requires state agencies to produce emails from private accounts if they discuss state business, the AP reported. Andrews argued former aides told him Gov. Scott used private emails to discuss state business, according to the AP.

Gov. Scott’s attorney Thomas Bishop argued the records were irrelevant and said the subpoena was a “fishing expedition,” the AP reported. Bishop told the AP Gov. Scott has already produced “tens of thousands” of documents.

*Source: The Associated Press*

**ACCESS  
RECORDS**

## Blind trust appeal filed

TALLAHASSEE – The former chief of staff to Gov. Reubin Askew appealed a decision upholding public officials’ use of blind trusts, according to The Florida Times-Union.

Jim Apthorp filed a notice of appeal of Circuit Judge John Cooper’s ruling that the state law allowing blind trusts is constitutional, the paper reported.

Apthorp argued blind trusts violate the Sunshine Amendment, which requires public officials to make “full and public disclosures” about their financial interests. Cooper reasoned the trusts were constitutional because public officials and the public have the same information about what is in the trusts.

*Source: The Florida Times-Union*

**OPEN  
GOVERNMENT**

## Agency will remain public

PINELLAS COUNTY – The Pinellas Tourist Development Council decided to remain a public agency, according to the Tampa Bay Times.

The Council determined it would not switch to a public-private model that would let it spend tax dollars without public accountability, the paper reported. The Council discussed a potential change in its model after the agency’s former executive director left to work for Osceola County’s tourism agency.

“We are talking about public dollars

**ACCESS  
MEETINGS**

for a public purpose, and I think the transparency issue is very important,” said Council member Julie Scales. “I think this model has worked for us.”

“Sometimes public records are good. Transparency is good. Voters want to know what’s going on and need to know what’s going on,” said Walter Klages, of Research Data Services, who participated in the debate.

*Source: Tampa Bay Times*

## Sarasota records suit dismissed

SARASOTA – A judge dismissed a public records lawsuit seeking a former city commissioner’s emails, according to the Sarasota Herald-Tribune.

Circuit Judge Charles Williams dismissed the lawsuit, filed by paralegal Michael Barfield, the paper reported. Barfield sought emails from former City Commissioner Terry Turner’s private account regarding his support for a new city charter amendment.

Barfield argued the emails were subject to Florida’s Public Records Law because the charter amendment would be voted on by the City Commission, according to the paper.

The lawsuit focused on whether Turner’s status as a public official could

be distinguished from his activities as a private citizen supporting the new city charter, the paper reported. Turner gave money to a group that supported the charter and organized other support activities.

Williams ruled Barfield had not shown that the emails he sought concerned Turner’s position as a commissioner, according to the paper. Williams said Florida’s Public Records Law did not pertain to private political affairs outside of Turner’s official capacity.

“If we leave it up to city officials to say they are wearing one hat one day, and another hat another day, that’s the end” of open government, said Barfield.

*Source: Sarasota Herald-Tribune*

## City must disclose transcripts

ST. PETE BEACH – The 1st District Court of Appeal ruled the City of St. Pete Beach must disclose records from a closed meeting.

Chester and Katherine Chmielewski sought transcripts from a closed meeting in which the city discussed its pending property lawsuit with the Chmielewskis, the ruling stated. The city refused to provide the transcripts and argued the lawsuit was still pending.

The Chmielewskis previously sued the city over a property dispute and to prevent the public from crossing their property for beach access, according to the order. The city and the Chmielewskis settled the lawsuit through mediation.

About a year after they settled the quiet

title suit, the Chmielewskis sued the city again to prevent the public from crossing their property, according to the order. The Chmielewskis then sued the city a third time to get access to the transcripts from a meeting discussing their lawsuit.

Florida’s Public Records Law requires government entities to disclose transcripts of attorney-client meetings where pending litigation involving that agency is discussed once the litigation has concluded.

The appeals court found that the city’s failure to disclose the transcripts was an “unwarranted expansion of a limited legislative exemption to the release of public records.”

*Source: Chmielewski v. City of St. Pete Beach, No. 2D13-4923*

## County records of investigation not exempt

VOLUSIA COUNTY – A judge ruled Volusia County officials could not withhold public records in a County Council investigation, according to The Daytona Beach News-Journal.

Circuit Judge Raul Zambrano ruled that Volusia’s “Inspector General” Jon Kaney was not exempt from Florida’s Public Records Law, the paper reported.

This lawsuit is a small portion of the County Council’s Waverly Media investigation, according to the paper. Waverly Media is suspected of illegal campaign contributions via free bus bench ads for political candidates. The county appointed Kaney to investigate the matter, the paper reported.

Daytona Beach attorney Ted Doran challenged the legality of the entire investigation and filed this lawsuit to require Kaney to release additional records pertaining to the investigation, according to the paper.

Zambrano said the county could not decide to give Kaney the title to make his records exempt from disclosure, the paper reported.

Zambrano ordered the county to pay Doran’s legal fees for the records dispute, according to the paper. The county has also spent more than \$100,000 on the Waverly investigation as a whole.

*Source: The Daytona Beach News-Journal*

## Group alleges White House hinders FOIA

WASHINGTON, D.C. – A legal group filed a lawsuit against the White House, claiming 12 federal agencies have committed FOIA violations, according to The Washington Post.

Cause of Action, a public interest group, alleges agencies have “improperly stonewalled” their FOIA requests by as much as 14 months, according to the complaint. The lawsuit alleges each agency violated statutory deadlines, which requires a response within 20 business days.

**FREEDOM  
OF INFORMATION**

Cause of Action argues the White House has become too involved in the FOIA process by “influencing agencies’ FOIA obligations to produce responsive

documents in a manner that is not countenanced by the law,” the

complaint states.

Cause of Action claims that a 2009 White House memo advised the general counsels of federal agencies to consult with the Office of the White House Counsel on all FOIA requests “that may

involve documents with White House equities,” according to the complaint. Cause of Action argues this memo never defined “White House equities” and has delayed agencies’ abilities to timely respond to FOIA requests.

In order to shed light on these delays, Cause of Action submitted FOIA requests to 12 agencies, according to the complaint. As of the date of the complaint, none of the agencies had responded to Cause of Action’s requests.

*Source: The Washington Post, Cause of Action v. IRS et al., Complaint, No. 1:14-cv-01407*

## Utility company violated public records law

TALLAHASSEE – The 1st District Court of Appeal ruled Jacksonville Electric Authority violated Florida’s Public Records Law, according to The Daily Record (Jacksonville).

The court found employees of JEA violated the law by delaying the release of documents to Promenade D’Iberville LLC, a firm which JEA is involved in a lawsuit with in Mississippi, the paper reported.

JEA sought a protective order for the records in Mississippi instead of producing them, and turned over some of the records when that protective order was later denied, according to the paper.

The Circuit Court in Duval County ruled JEA had not violated the Public Records Law, but the appeals court reversed that finding, the paper reported.

“In this case, JEA violated the Act by delaying Promenade’s access to non-exempt public records for legally insufficient reasons,” the opinion stated. “Florida law doesn’t allow public records custodians to play favorites on the basis of who is requesting records.”

Source: *The Daily Record (Jacksonville)*, The Promenade D’Iberville LLC v. Rachele Sundry, No. 1D13-5583

## City Council did not violate law

PORT ST. LUCIE – The State Attorney’s Office has determined the Port St. Lucie City Council did not violate Florida’s Sunshine Law during an attorney-client session, according to Scripps Treasure Coast Newspapers.

Assistant State Attorney Ryan Butler said the office conducted interviews of Vice Mayor Linda Bartz and Councilwoman Michelle Berger and found no conclusive evidence to determine the Council violated the law, the paper reported.

At the meeting, the Council allegedly discussed a pending breach of contract lawsuit against the Port St. Lucie City Center and DeGuardiola Properties, the paper reported. The Council also allegedly discussed filing a potential

lawsuit against City Center developer Lily Zhong to regain property and back taxes.

Florida’s Sunshine Law allows closed meetings between city councils and city attorneys when discussing pending litigation involving the city. The possibility of filing a lawsuit against Zhong is not covered by the exemption, according to the paper.

Butler said his office will obtain the transcripts of the meeting once the case is settled to determine if a violation occurred, the paper reported.

“Until that litigation is concluded, we’re not going to know what was said at that meeting,” said Butler.

Source: *Scripps Treasure Coast Newspapers*

## Council rejects stronger ethics rule

PENSACOLA – The Pensacola City Council voted against a measure to strengthen an ethics ordinance, according to the Pensacola News Journal.

The Council voted 5-4 against a proposed amendment that would have included text messages and cellphone records as public records in the ethics ordinance, the paper reported.

The Council rejected the ordinance because many members were

confused whether officials would be accountable to public records requests for copies of text messages or other communications that may

contain personal information, according to the paper.

Some members were also concerned about invasions of privacy or the need for additional definitions if Florida Statute 119 already outlines what public records are, the paper reported.

Source: *Pensacola News Journal*

**OPEN  
GOVERNMENT**

## Councilman sues for legal fees

PORT ST. LUCIE – Port St. Lucie City Councilman Ron Bowen filed a lawsuit against the city for reimbursement of legal fees, according to Scripps Treasure Coast Newspapers.

In the lawsuit, Bowen asked the city to pay about \$25,000, which he incurred defending himself against a Florida Sunshine Law criminal charge earlier this year, the paper reported.

The City Council voted 4-1 in June against reimbursing Bowen’s legal fees, according to the paper. Bowen cast the only vote in his favor.

Bowen was charged with a second-degree criminal misdemeanor for

violating Florida’s Sunshine Law, the paper reported. He pleaded no contest to a lesser civil infraction and was ordered to pay \$350 in fines.

Bowen argued the law authorizes the City Council to reimburse his legal fees because he was acquitted, according to the paper.

“All elected officials who have been wrongfully accused of a crime are entitled to full reimbursement of their attorney fees once justice triumphs and their charges are dismissed,” said Richard Kibbey, Bowen’s attorney.

Source: *Scripps Treasure Coast Newspapers*

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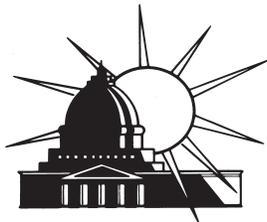
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## FOIA Improvement Act: Why we should care

The frenzy is on as the 113th Congress moves into its last lap and mid-term electioneering hits peak. Left in suspension is a rush of politically charged bills pulsating to get through committee, desperate to avoid sudden death at the stroke of a partisan pen.

Standing apart from the teeming mass is one critical bipartisan bill, the FOIA Improvement Act, co-authored by Senator John Cornyn (R-TX) and Patrick Leahy (D-VT). By unclogging the flow of government information Senate 2520 will improve access to information by and about the federal government, thus to facilitate the transparency that undergirds government accountability. Because it is not sexy, pricey or viciously partisan, the FOIA Improvement Act escapes the limelight; because it affects every American's right to know, it deserves attention, understanding and discussion.

### The Back Page

By Mary Treacy

Tribune's James Eli Shiffer described in his recent series relating his "mystifying journey" into the world of FOIA.

What fail to realize is that the information that reaches us through the press, advocacy groups, social media, even distorted propaganda, depends on someone having delved into the public record to ferret out the facts. It's worth paying attention to FOIA, the "bill of rights" for the individual or organizational information seeker.

Access to information covers a wide variety of issues and can provide a vast array of different information. Is a clean and healthy Mississippi a concern? The Environmental Protection Agency collects the essential data that informs the work of environmental organizations nationwide.

Worried about food safety? You'll need direct or indirect access to the Food and Drug Administration, the U.S. Department of Agriculture and to the information mavens at Food and Water Watch, the Environmental Working Group or the Minnesota Extension Service—all of these and countless others depend on ready access to federal government data and research.

Threatened by the oil-loaded trains traveling across our country's railways? The US Department of Transportation



Mary Treacy

Research Hub can help in understanding the players and pressure points.

Think there may be something to climate change? Information from the feds is the essential first step.

Questions about services for veterans? The Department of Veterans Affairs is a great place to start.

Planning a family vacation in Our Nation's Capitol? You'll want to tap into the DC Visitors' Center.

Worried that the FBI still has a file on you? Can't hurt to ask.

Want to track the FOIA Improvement Act? Thomas at the Library of Congress is just one of the options you have to follow legislation-in-progress.

The point is that the federal government is the sole source of massive data and practical day-to-day information on which we as a nation and as individuals depend. Our democracy rests on the ability of citizens to keep an eye on our government and to hold our officials accountable.

Information by and about the government is the resource with the power to enlighten, misinform, shape an issue, turn a profit, and/or create a strong, functional and accountable democracy.

Truth to tell, communications and information technology have outstripped our individual and collective ability to keep up – and politics can clog the gears. That doesn't mean we give up. Over time, agencies have intentionally or inadvertently created barriers of time, cost and efficiency. That doesn't mean we relinquish our rights.

The original FOIA, as it was signed by President Lyndon B. Johnson on July 4, 1966 (with some reluctance), was built on a common understanding of the underlying principles. The FOIA Improvement Act of 2014 holds to and reinforces those principles. Bottom line: by eliminating the barriers that have thwarted the process over time, the FOIA Improvement Act restores FOIA to its original, intended – and absolutely essential – purpose.

The FOIA Improvement Act must pass through the Senate Judiciary Committee. The House is already on board. Every citizen can benefit to having access to information.

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*Mary Treacy is the Outreach Coordinator at [OpenTheGovernment.org](http://OpenTheGovernment.org), a blogger, and founder and long-time board member of the Minnesota Coalition on Government Information.*