
THE BRECHNER REPORT

Volume 38, Number 11 ■ A monthly report of mass media law in Florida
Published by The Brechner Center for Freedom of Information ■ College of Journalism and Communications ■ University of Florida
November 2014

Court upholds Jacksonville Sunshine Law violation

JACKSONVILLE – The 1st District Court of Appeal upheld a ruling that Jacksonville violated Florida’s Sunshine Law during Police and Fire Pension Fund negotiations, according to The Florida Times-Union.

The city and fund had asked the appellate court to overturn a ruling by Circuit Judge Waddell Wallace that the city violated Florida’s Sunshine Law during private pension negotiations in 2013, the paper reported.

Wallace found the meetings weren’t open to the public, and were held without notice to the public and without taking minutes, all of which violate the Sunshine Law, according to the paper. The three judges hearing the appeal unanimously agreed with Wallace’s ruling.

The court rejected the city’s argument that the talks did not violate the law because the Sunshine Law only applies to collective bargaining,

and not pension discussions, the paper reported.

“I think the Sunshine Law recognizes that when there’s a negotiation going on between a public employer and their employees that there’s another real party of interest there... and that’s the public,” Appeals Court Judge L.

Clayton Roberts told attorneys during oral argument.

Source: The Florida Times-Union

**ACCESS
MEETINGS**

Mayor sued for public documents

ORANGE COUNTY – A citizens group filed a lawsuit claiming the Orange County mayor violated Florida’s Public Records Law, according to the Orlando Sentinel.

Organize Now alleged Mayor Teresa Jacobs refuses to allow access to public documents in a county Dropbox account, the paper reported. Dropbox is a cloud-based account that allows people to share and store documents.

“We want to know who has access to the mayor’s Dropbox files, and what

are its contents,” said Stephanie Porta, executive director of Organize Now.

The lawsuit claimed county staff changed passwords, removed several documents and redacted information on who accessed the account following public records requests from Organize Now, according to the paper.

Porta told the paper Organize Now is specifically seeking information on who has met with county officials regarding four county charter amendments.

Source: Orlando Sentinel

**ACCESS
RECORDS**

Contract cancelled due to suit

MANATEE COUNTY – The Manatee County School District cancelled a school security contract because of a pending lawsuit, according to the Bradenton Herald.

Citizens for Sunshine filed a lawsuit against the Manatee County School District, claiming they approved a \$3 million contract, acting on a recommendation that occurred at a private meeting, the paper reported.

Superintendent Rick Mills said the cancellation of the contract was the direct result of the lawsuit from the community organization, according to the paper. Mills

said legal advice led him to cancel the contract.

“It was the conclusion of all counsel based upon diligent research, that the technical violation of Sunshine Law renders the contract void,” Mills said. “This technical violation cannot be remedied by any subsequent school board measures.”

Andrea Mogensen, the lawyer for Citizens for Sunshine, said the cancellation of the contract does not cancel the Sunshine Law violation, but likely will make the legal process easier, according to the paper.

Source: Bradenton Herald

**ACCESS
MEETINGS**

Citrus County faces suit for withholding public records

CITRUS COUNTY – Citrus County faces a lawsuit for withholding public records, according to the Citrus County Chronicle.

Robert Schweickert Jr. sought records from a work force harassment investigation against Commissioner Scott Adams, the paper reported.

Schweickert claimed the attorney hired to investigate the matter should give him the document.

The attorney, Dorothy Green, argued the records Schweickert seeks are exempt from disclosure until the investigation is complete, according to the paper.

Schweickert claimed the exemption for investigations does not apply because the target of the investigation is not a county employee, but an elected official, the paper reported.

Source: Citrus County Chronicle

**ACCESS
RECORDS**

Scott moves fight over emails to California

TALLAHASSEE – Gov. Rick Scott moved the fight over a subpoena to recover information about his email accounts to California, according to The Miami Herald.

Scott had asked a California judge to wait until after the election to rule on whether Google can release details about Gmail accounts used by Scott and his employees, according to the paper.

Scott hired a California law firm, which filed a petition to dismiss the subpoena

in California, where Google is located, following two orders from Tallahassee Circuit Judge Charles Francis to stop fighting the subpoenas, the paper reported.

Florida attorney Steven Andrews wants to identify the IP addresses of the governor and his staff members, according to the paper. Andrews claims the accounts were created to allow Scott and his staff to circumvent Florida's Public Records Law.

Andrews asked Scott in May to provide information about a Google account used

by the governor's office, but Scott refused, the paper reported. A judge approved a subpoena to order Google to provide the information Andrews requested in September.

"It seems they have something to hide," said Andrews. "Why would the governor spend so much money on California lawyers to stop this from getting to court? If I was a cynic, I would say there's a political motive to this."

Source: *The Miami Herald*

County revises relationship with EDC

BREVARD COUNTY – Brevard County revised its agreement with the county's Economic Development Commission to clarify what records are public, according to Florida Today.

The Brevard County Commission approved a resolution requiring requests for economic development exemptions from Florida's Public Records Law to be filed with the county manager, the paper reported.

County Attorney Scott Knox said this resolution allows the EDC to operate in its current role as a private economic development agency, according to the paper.

The Commission also approved a grant agreement, giving the EDC \$1.4 million in county funding next year, the paper reported.

The grant agreement explains that the EDC is a private corporation and will not necessarily be subject to Florida's Public Records Law, according to the paper. The agreement also states EDC records will be public when working on a county project.

"If we're going to be spending \$1.4 million, we should be able to see where your money is being spent," said Commissioner Trudie Infantini, who voted against the resolution and grant agreement.

Circuit Court Judge John Moxley ruled in March that EDC records involving county projects were subject to the Public Records Law, the paper reported. The EDC appealed the ruling, which is now pending, to the 5th District Court of Appeal.

Source: *Florida Today*

Scott's finances raise questions

TALLAHASSEE – Gov. Rick Scott's decisions on his financial disclosures have raised new questions about his transparency, according to The Miami Herald.

The Miami Herald and Tampa Bay Times reviewed hundreds of federal and state documents filed in Florida and many other states, the paper reported.

The investigation found that the governor does have a role in managing his personal assets and does not disclose the entire value of assets in different trusts.

The documents show that information about Scott's income and investments on state disclosure forms is different from his federal financial disclosures to the IRS, according to the paper. Scott's income reports also vary on state and

federal forms and his income fluctuated as much as \$41 million in a single year.

The documents also show that Scott's longtime financial advisors handle his blind trust, the paper reported. Additionally, records show that Scott had signed off on some of the assets in his blind trust, which is supposed to be independent from the governor.

Scott pushed for more transparency from opponent Charlie Crist, but has not extended that transparency to many of his family accounts and assets, according to the paper.

Ultimately, the investigation revealed that Scott's net worth in 2013 could be much more than the \$132.7 million he disclosed, the paper reported.

Source: *The Miami Herald*

OPEN
GOVERNMENT

Court takes Florida judicial case

TALLAHASSEE – The U.S. Supreme Court will hear a Florida case on whether judicial candidates can personally solicit campaign contributions, according to The Ledger (Lakeland).

The Florida Supreme Court upheld a ban on these solicitations earlier this year, ruling that it helped preserve the integrity and impartiality of the judiciary, the paper reported.

Former Hillsborough County judicial candidate Lanell Williams-Yulee asked the U.S. Supreme Court to overturn the Florida court's ruling because it violates candidates' First Amendment rights

related to political speech, according to the paper.

Williams-Yulee's attorneys argue that the Florida Supreme Court's decision is a content and speaker-based restriction on speech, and such restrictions are rarely upheld by courts, the paper reported.

The Florida Supreme Court reprimanded Williams-Yulee for signing a letter to potential campaign contributors, according to the paper. While candidates cannot personally solicit contributions under Florida law, they can establish committees to raise and spend money.

Source: *The Ledger (Lakeland)*

FIRST
AMENDMENT

FDLE searches elections office

BUNNELL – Officials from the Florida Department of Law Enforcement searched the office of Flagler County Supervisor of Elections, according to The Daytona Beach News-Journal.

Agents served a search warrant on Supervisor Kimberle Weeks's office, but the FDLE would not comment further because the investigation is ongoing, the paper reported.

Weeks recorded a conversation between Flagler County Attorney Al Hadeed and County Commissioner Charlie Ericksen during a canvassing board meeting, according to the paper. Neither of the men knew they were being recorded.

The men were discussing an incident that occurred prior to Weeks's election in 2008, the paper reported. Hadeed can be heard telling Ericksen that he once had to "caution" a commissioner for reading election ballots, which is prohibited.

County Administrator Craig Coffey told the paper it is a third-degree felony to record a private conversation. Weeks responded, saying that she is permitted to record public meetings without giving notice, according to the paper.

Coffey said the FDLE will be conducting more interviews to continue the investigation, the paper reported.

Source: The Daytona Beach News-Journal

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The Brechner Report is published 12 times a year under the auspices of the University of Florida Foundation. The Brechner Report is a joint effort of The Brechner Center for Freedom of Information, the University of Florida College of Journalism and Communications, the Florida Press Association, the Florida Association of Broadcasters, the Florida Society of Newspaper Editors and the Joseph L. Brechner Endowment.

Official scrutinized over records

QUINCY – Quincy Interim City Manager Mike Wade is under scrutiny following a possible violation of Florida's Public Records Law, according to the Gadsden County Times.

City Commissioner Keith Dowdell questioned Wade and made a motion for an administrative investigation of allegations that portions of personnel files were deleted, the paper reported.

Dowdell waited for public records for such a long time that he decided to pay for personnel files as a public

citizen, according to the paper. When Dowdell inspected the file, a form approving the employee's permanent employment was missing.

Dowdell told the paper the city provided a memo in place of the form that said, "forms that are not acted upon are discarded." Deleting public records is a violation

of Florida's Public Records Law. After an initial consultation with the city attorney, the City Commission decided unanimously to continue the investigation.

Source: Gadsden County Times

ACCESS
RECORDS

IRS withheld FOIA information

WASHINGTON, D.C. – A report indicates that the Internal Revenue Service withheld information from hundreds of Freedom of Information Act requests, according to the Washington Examiner.

The Treasury Department Inspector General for Tax Administration found that the IRS intentionally withheld or failed

to "adequately search" in response to hundreds of FOIA requests, the paper reported. In other responses, the IRS released more than it was authorized, including individuals' bank records.

The IRS withheld information in approximately 336 requests in 2013, according to the paper.

The Inspector General found the IRS's

backlog of FOIA requests increased 84 percent at the end of the 2013 fiscal year, the paper reported. As of June 2014, the backlog had grown another 16 percent.

The Inspector General attributed the 2013 backlogged request increase to a growth in the number of exempt organization requests, according to the paper. In May 2013, an investigation uncovered that the IRS had been

harassing and targeting hundreds of Tea Party and conservative nonprofit applicants, the paper reported.

The Inspector General did not issue any recommendations with its report, but suggested the IRS implement the recommendations it offered last year, according to the paper.

Source: Washington Examiner

FREEDOM
OF INFORMATION

Xerox employee sues state

TALLAHASSEE – A Xerox company employee filed a lawsuit against the Florida Department of Revenue, claiming the agency violated Florida's Sunshine and Public Records laws, according to The Miami Herald.

The lawsuit alleges the department held secret meetings to decide which company to award a five-year, \$50 million contract to help the state process child support payments, the paper reported.

A spokeswoman for the department said recordings of the meetings were lost due to technical problems, according to the paper.

The lawsuit seeks to block the contract, which was awarded to one of Xerox's competitors, according to the paper. A Xerox employee filed the lawsuit because corporations are not allowed to file suits regarding Florida's Sunshine Law, the paper reported.

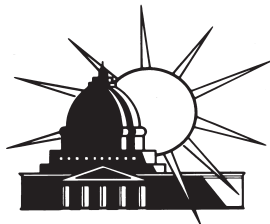
Xerox also filed an administrative law complaint to stop the contract, according to the paper. The department has asked the administrative law judge to let them correct the error by holding a new meeting that complies with Florida's Sunshine Law.

Source: The Miami Herald

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November 2014



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Text messages should be part of records policy

What a difference a few years makes.

In August 2009, The Miami Herald broke the story that two Public Service Commissioners and their staff had exchanged private text messages with lobbyists in the midst of an electric company rate case.

Records were not retained, but the proof was in the cryptic emails that showed PSC staff had given the personal identification numbers of the BlackBerrys used by commissioners to utility lobbyists -- enabling them to conduct conversations out of the sunshine.

First, commission staffers were disciplined. Next, the Leon County state attorney and the Florida Department of Law Enforcement investigated. Finally, then-Gov. Charlie Crist announced the commission had become "too cozy" with the industry it regulates. Within months, he had replaced two commissioners with appointees who had no ties to the utility industry.

The Back Page

By Mary Ellen Klas

Like most state agencies back then, the PSC considered PIN messages and BlackBerry texts "transitory," and did not have a policy for retaining them. But news of the messaging was enough to tarnish the reputation of the commissioners and the staff involved.

Attorney General Bill McCollum responded too. He convened the Sunshine Technology Team and announced that his office would begin treating all instant messages as public record. He set up a policy to record them for the public to view.

Now, fast forward to 2014, and much has changed. BlackBerrys have been replaced with iPhones and their progeny. Text messaging among state government staff is ubiquitous. And outrage over state employees who use text messages to discuss politically sensitive topics out of the sunshine is not.

In fact, it's hard to find anyone in state government willing to revive McCollum's attempt to bring text messages into the sunlight. Legislators routinely communicate with lobbyists and their colleagues via text messages, but they are not required to retain them for the public to access.

But the governor's office is where the greatest change has occurred. In the past three months, the Miami Herald/Tampa Bay Times Tallahassee bureau has written a series of stories about the



Mary Ellen Klas

use, and abuse, of text messages among the governor's staff.

The papers found that Gov. Rick Scott's first two chiefs of staff instructed employees to use private email accounts and personal cell phones to transmit messages on politically sensitive issues, effectively creating a barrier to access.

Scott's current chief of staff Adam Hollingsworth, to his credit, instituted a texting ban for employees.

The governor's office "now discourages the use of text messaging by employees because text messages are hard to catalog due to the digital nature of the message," said Scott spokesman John Tupps.

But that didn't really stop staff from texting. The papers found hundreds of text messages from prominent Republicans seeking to communicate with the governor sent to his staff and, in many cases, they responded.

Tallahassee attorney Steven R. Andrews discovered the existence of these texts inadvertently when a member of the governor's staff accidentally sent a text message to DEP Secretary Herschel Vinyard's email account.

Andrews probed, and asked for all text messages related to the exchange and others. He received some but, with no institutionalized retention policy like the one McCollum suggested, he is confident that many of the records were not kept and, absent another errant message, there may be no way to know.

The governor has also established a new policy that the employee, not the state, is the "custodian" of text messages and other public records held on all private cell phone accounts.

Andrews in his lawsuit against the governor called it something else: "Orwellian." He suggests a scenario in which a citizen arrives at the home of a state employee, asks to inspect his private cell phone for text messages and the employee either has to comply, hire a lawyer, or face a criminal complaint.

Scott says he follows the law. As McCollum said four years ago, not retaining text messages as public records in today's communications world is old school thinking.

Mary Ellen Klas is co-bureau chief of the Miami Herald/
Tampa Bay Times Tallahassee Bureau.