
THE BRECHNER REPORT

Volume 39, Number 3 ■ 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

March 2015

Media organizations sue over FDLE firing

TALLAHASSEE – Major media organizations filed a lawsuit against Gov. Rick Scott and other Cabinet members regarding the firing of the FDLE commissioner, according to the Tampa Bay Times.

The lawsuit was amended to include a large group of Florida’s media outlets, First Amendment advocates and lawyer Matthew Weidner. The parties alleged that Scott and other Cabinet members violated Florida’s Sunshine Law by meeting in private and using their aides as conduits to discuss

firing FDLE Commissioner Gerald Bailey, the paper reported.

The lawsuit claims Scott “violated the Sunshine Law by using conduits to engage in polling, discussions, communications and other exchanges with other members of the Cabinet regarding his unilateral decision to force the resignation of the FDLE Commissioner and appoint a replacement without any notice to the public.”

The parties also filed an emergency motion to preserve electronic evidence. The motion alleges “the governor and his staff have previously purged public records without properly archiving them.”

The lawsuit asks a state judge to enjoin Scott and his Cabinet from conducting future meetings in private and to declare that all Cabinet meetings are subject to Florida’s Sunshine Law, according to the paper.

Scott said his aides told other Cabinet members’ aides he wanted new leadership at the FDLE and no one objected, the paper reported. Bailey was told to “retire or resign” in December, but his dismissal was never discussed in a public meeting, according to the paper.

Source: *Tampa Bay Times*, Weidner et al. v. Rick Scott, No. 23326580, *Emergency Motion for Preservation of Electronic Evidence*, No. 24089127

OPEN
GOVERNMENT

Pension fund files appeal

TALLAHASSEE – A Florida appellate court heard arguments over public officials’ use of blind trusts for their assets, according to the Tampa Bay Times.

Jim Apthorp, former chief of staff for Gov. Reubin Askew, challenged the law as violating the state’s Sunshine Amendment, which requires public officials to operate as a public trust, according to the paper.

Lawyers for Gov. Rick Scott and Attorney General Pam Bondi argued the use of blind trusts does not violate Florida’s financial disclosure laws, the paper reported.

Leon County Circuit Judge James Cooper found that the use of blind trusts was constitutional, according to the paper. Apthorp appealed.

Source: *Tampa Bay Times*

ACCESS
MEETINGS

Court hears blind trust case

JACKSONVILLE – The Police and Fire Pension Fund asked the Florida Supreme Court to overturn an appellate ruling, according to The Florida Times-Union.

The 1st District Court of Appeal ruled last year that the city violated Florida’s Sunshine Law during private pension negotiations.

The Pension Fund’s brief to the Supreme Court argued that other appellate courts in Florida have ruled circuit

judges are not the designated body for determining collective bargaining issues, the paper reported.

“Our position is the District Court of Appeal was correct in saying that the circuit judge has the power to decide the threshold question of whether there’s collective bargaining to apply the Sunshine statute,” said George Gabel, attorney for Frank Denton, editor of The Florida Times-Union.

Source: *The Florida Times-Union*

ACCESS
MEETINGS

Sunshine allegations investigated

SANTA ROSA COUNTY – The State Attorney’s Office is investigating allegations that a Santa Rosa County commissioner may have violated Florida’s Sunshine Law, according to the Northwest Florida Daily News.

Commissioner Bob Cole acknowledged he spoke to a fellow member before a scheduled meeting about his intention to nominate someone for a vacant board seat, the paper

reported.

“We are in the process of reviewing it. We’re interviewing some individuals as part of the review,” said Greg Marcille, chief assistant state attorney. Marcille said the investigation will determine whether charges are appropriate.

Florida’s Sunshine Law prohibits members of a board from discussing matters in private that may come before the board.

Source: *Northwest Florida Daily News*

ACCESS
MEETINGS

Dept. of Corrections issues employee gag order

TALLAHASSEE – The Florida Department of Corrections issued a new rule banning inspectors from discussing investigations or releasing records to outsiders, according to the Bradenton Herald.

The order requires all employees of the DOC's Office of Inspector General to sign a confidentiality agreement that they will not release information on cases to anyone, the paper reported. Any violation of the policy could result in "immediate termination."

The order came two days after two

Senate committees asked DOC Inspector General Jeffery Beasley about current and former inspectors who have been denied whistleblower status in the wake of suspicious inmate deaths, neglect, contraband rings and budget issues, according to the paper.

Beasley was also asked about department policies and employee retribution, and lists of all open and closed investigations, all investigations that involved contraband, employee misconduct and sexual misconduct between inmates and guards, the paper reported.

"I have not asked the IG for a copy of anything that should not be a public record and I am repulsed to think he would send out a letter to his staff not to release information that would be in the sunshine otherwise," said Sen. Greg Evers.

DOC Spokesman McKinley Lewis said the new policy is not designed to gag employees or keep records out of the sunshine, according to the paper.

"It's not to silence anybody or anything crazy like that," he said. "It's just to make sure everyone is following the law."

Source: Bradenton Herald

Appellate court sides with prosecutor on records

TALLAHASSEE – The 1st District Court of Appeal upheld a ruling regarding the fee for public records in the Michael Dunn murder case, according to The Florida Times-Union.

The appellate court upheld the trial court's ruling that State Attorney Angela Corey was allowed to take 10 weeks to review jailhouse phone calls and could charge the media \$6,300 for the records, the paper reported.

The Florida-Times Union and other media organizations argued that the review

process improperly delayed access to the records. The media organizations said the review was unnecessary because the State Attorney's Office had already reviewed the calls in preparation for Dunn's trial.

The appellate court ruled that prosecutors had no legal duty to coordinate the review of the phone calls for trial preparation and public records review, the paper reported.

Florida's Public Records Law requires information like Social Security numbers, bank numbers and confessions made by

a defendant to be redacted before being released to the public. The State Attorney's Office said reviewing more than 180 hours of phone calls to make redactions would take weeks.

The appellate court asked the Florida Supreme Court to review its ruling, according to the paper. The judges certified the question of whether public officials have a legal obligation to review materials if it would be economically efficient and faster.

Source: The Florida Times-Union

State attorney urges caution on police body cameras

LAKELAND – State Attorney Jerry Hill suggested law enforcement agencies delay the use of body cameras on officers until legal concerns are addressed, according to The Ledger (Lakeland).

"I have many concerns about the use of these cameras; including privacy rights, public records, retention and information system capabilities," said Hill in a letter to police chiefs and sheriffs.

Hill also said that if law enforcement agencies begin using cameras, they should be prepared to provide the State Attorney's Office with access to the recordings and to retain all recordings as public records, the paper reported.

Source: The Ledger (Lakeland)

The University of Florida to host FOI Conference

Interested in learning more about open government? Do you have ideas for improving access to government information and increasing transparency? The College of Journalism and Communications is hosting "Breaking Down Walls: The Fight for Open Government," March 26-27, in Gainesville, Fla.

Journalists, media lawyers, and access advocates from around the country will join students and the UF community for this two-day conference.

Sharyl Attkisson, Emmy-award winning journalist and N.Y. Times bestselling author of "Stonewalled," will be the keynote speaker on March 26 at 6 p.m. This session is free and open to the public.

The conference will include sessions

on FOI challenges and focus on opportunities for improving access at both the federal and state level.

The conference is made possible by a gift from Sharyl Attkisson, and is co-sponsored by the College of Journalism and Communications, the Joseph L. Brechner Center for Freedom of Information, and the law firms of Thomas & LoCicero and Holland & Knight.

For more information on the conference, contact The Brechner Center for Freedom of Information at 352-392-2273 or ssilberman@jou.ufl.edu.



ACCESS MEETINGS

Electric authority raise approval scrutinized

JACKSONVILLE – A Jacksonville utility company has been scrutinized for approving a raise for the company’s CEO in a series of private meetings, according to The Florida Times-Union.

JEA, the city’s electric authority, held a board meeting where members unanimously approved a \$43,169 bonus for its CEO Paul McElroy, the paper reported. The meeting in which the raise was approved was not publicly noticed, according to the paper.

Florida’s Sunshine Law prohibits public officials from privately discussing business that may be voted on in the future.

The only record available to determine how JEA board members calculated the raise was a written evaluation from McElroy, the paper reported. The rest of the board members’ scores have not been released.

The city’s Office of General Counsel said no violation of the Sunshine Law occurred, but JEA’s attorney said the board should review its process in the future, according to the paper.

Source: The Florida Times-Union

FDLE investigation refused

TALLAHASSEE – State Attorney Willie Meggs announced he will not investigate a potential Sunshine Law violation regarding the dismissal of the commissioner of the Florida Department of Law Enforcement, according to the Tampa Bay Times.

Meggs was formally asked to conduct an investigation into whether Cabinet members and Gov. Scott violated the Sunshine Law by discussing FDLE Commissioner Gerald Bailey’s removal in private, the paper reported.

“It doesn’t ring my bell,” Meggs said. “If one of the Cabinet staff aides came to my office and wanted to confess, that’s about the only way I’m going to prove a violation of the Sunshine Law. Short of that, I’d need a wire tap. People are generally smart enough that if they know they’re violating the law they’re not going to put it in writing.”

This is the second time Meggs has refused to investigate the matter, according to the paper.

Source: Tampa Bay Times

Bill to curb ‘predatory’ requests

TALLAHASSEE – Two Florida lawmakers proposed bills that would attempt to curb alleged predatory public records requests, according to the Florida Center for Investigative Reporting.

Sen. Wilton Simpson and Rep. Halsey Beshears both introduced bills in the Senate and House that would amend Florida’s Public Records Law to protect private companies doing business with the state, the FCIR reported.

The bills were proposed following a story about a nonprofit foundation and law firm that were allegedly profiting

from filing public records requests against public and private agencies and then suing for non-compliance with the requests, according to the FCIR.

Access advocates have criticized the bill, claiming it limits citizens’ access to records too severely, the FCIR reported.

The main objections to the bills involve the requirement that a letter be sent five days prior to filing a lawsuit and proof that an entity willfully failed to comply with the records request.

Source: Florida Center for Investigative Reporting, HB 163, SB 224, www.leg.state.fl.us

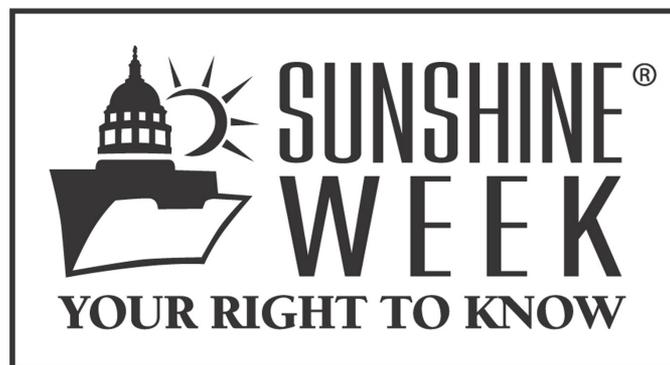
**ACCESS
RECORDS**

THE BRECHNER REPORT

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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.

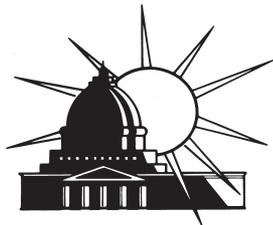


Sunshine Week, a national initiative to promote a dialogue about the importance of open government and freedom of information, is March 15-21, 2015. Show your support for open government by asking elected officials to sign the Brechner Center’s Open Government Pledge. To learn more about the program and download the pledge, visit www.brechner.org.

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3208 Weimer Hall, P.O. Box 118400
Gainesville, FL 32611

March 2015



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Open government puts people in charge

The term Sunshine State has also come to describe a state government that is open and accessible to all citizens, most clearly expressed in our state's open government laws.

But a profound and dangerous darkness has overtaken every corner of state government and most especially in Tallahassee. Gov. Rick Scott recently boldly acknowledged this creeping darkness when he asserted that "longstanding convention and tradition" were the explanation for blatant violations of the law.

But neither convention nor tradition can be any excuse for violations of the law for those entrusted with government power any more than such excuses can be cited by gangs or organized criminals when they break the laws of the land.

The Back Page By Matthew Weidner

affairs with openness, integrity and full disclosure.

But it is clear from the scandals that are seeping out of every corner that this is not the case. The current conflicts and scandals represent a real crisis in state government.

Citizens from every corner of this state, from Pensacola to the Keys, are becoming acutely aware that their government is broken.

In the middle of this, we should all take a moment to recognize the sacrifices of those among us who heed the call to serve in government.

While the attacks on high level staff have captured media attention, we all need to recognize that attacks on public servants are not isolated to those at the top of these organizations.

Those employees who serve within state government must be free to openly challenge and question their organizations just as citizens must be free to challenge and question their government at all levels.



Matthew Weidner

And when it appears that state employees are reasonably afraid to speak out, citizens must stand up and speak out for those employees and give clear voice to their concerns.

We should all take a moment to be reminded of the critical role played by our free press. All forms of press from print to broadcast, local, state and national, are under extraordinary budget pressures that severely limit their ability to carry out their critical function.

We must recognize the dire consequences of a strained free press and take real steps to breathe new life and support into these organizations as they transition into this new age of media. The fight for sunshine in government presents a real opportunity for a renaissance.

The critical need to reinforce our state's commitment to open government is truly a bipartisan cause. It is most encouraging to see that real leaders in state government, leaders from both parties, are standing up making explicit demands that all of state government recognize open government.

It is time that the citizens of this state wake up, become more engaged and take a far more active role in this government that wields such awesome power over every one of us.

The obligation of citizens to participate in their government does not end on Election Day; every one of us have a sacred obligation to actively participate and directly challenge when government oversteps its bounds. In Florida, this time is now.

There will be a series of town hall events around the state to answer specific questions about sunshine and the current corruption and scandals.

The good local legislators who are standing up for sunshine in government will be there to explain just how committed they are to open government, and those who serve darkness have also been invited.

Matthew Weidner is a lawyer at the Weidner Law firm in St. Petersburg.