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# THE BRECHNER REPORT

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## Scott no longer using email for state business

TALLAHASSEE – Gov. Rick Scott said he has stopped using email in March to discuss state business, according to the Orlando Sentinel.

Scott's deputy communications director John Tupps said Scott only uses his email now to communicate with family, the paper reported.

Scott's staff members said he conducts

state business mostly in meetings with lawmakers, according to the paper.

Spokespeople for other Cabinet members said the governor does not communicate with any Cabinet members via email, the paper reported.

Scott faced criticism last fall when The Associated Press revealed he was using private email to discuss state

business and many of those emails did not become public record, according to the paper.

Correspondence to and from the governor is public record under state law, unless it falls under specified exemptions. These correspondences must be archived and released in response to public records requests, the paper reported.

*Source: Orlando Sentinel*

**ACCESS  
RECORDS**

## Judge strikes pension agreement

JACKSONVILLE – A circuit judge struck down the city of Jacksonville's 30-year agreement with the Police and Fire Pension Fund because it violates Florida's Sunshine Law, according to The Florida Times-Union.

Circuit Judge Thomas Beverly agreed with critics of the pension fund that have been arguing since 2011 that the agreement violates the Sunshine Law, the paper reported.

The Concerned Taxpayers of Duval County and Curtis Lee filed a lawsuit claiming the agreement negotiated in 2000 between the city and the pension fund violated Florida's Sunshine law because the parties came to the agreement

in a series of secret meetings, the paper reported.

Beverly based his decision on a similar case in the 1st District Court of Appeal, which upheld the outcome of a lawsuit filed by Frank Denton, editor of The Times-Union, ruling that the city and pension fund violated the Sunshine Law during a series of closed mediation sessions, according to the paper.

Beverly ruled that the closed meetings invalidated any agreement, the paper reported. His ruling does not immediately change pension benefits, but prompts the city to change the collective bargaining process as regulated by state law.

*Source: The Florida Times-Union*

**ACCESS  
MEETINGS**

## Senate passes email exemption

TALLAHASSEE – The Florida Senate unanimously approved a bill to exempt taxpayer email addresses from public records disclosure, according to Scripps

Treasure Coast Newspapers.

The bill would exempt any email address used by tax collectors to send tax notices, the paper reported.

The bill's sponsor, Jack Latvala, R-Clearwater, said he was concerned that criminals could use the email addresses

for identity theft, scams and other crimes, according to the paper.

"The public availability of personal email addresses invites and exacerbates thriving and well-documented criminal activities and puts taxpayers at increased risk of harm," said Latvala.

Critics of the bill said the exemption will not curb identity theft, the paper reported.

*Source: Scripps Treasure Coast Newspapers*

**ACCESS  
RECORDS**

## Former FDLE chief questioned

TALLAHASSEE – Former Florida Department of Law Enforcement Commissioner Gerald Bailey confirmed he met with federal prosecutors to investigate his dismissal from office, according to the Bradenton Herald.

Bailey said he met with members of the U.S. Attorney's Office in Tallahassee in early March, but would not say what they talked about and declined further comment, the paper reported.

**OPEN  
GOVERNMENT**

Bailey's sudden dismissal from the FDLE raised Sunshine Law concerns and inspired a lawsuit by a coalition of media organizations, according to the paper.

The organizations are seeking Bailey's sworn testimony to assist in the lawsuit, the paper reported. Bailey agreed to testify under oath in a video deposition.

Several advocacy groups asked the U.S. Attorney to investigate Bailey's dismissal after State Attorney Willie Meggs declined to appoint a special prosecutor, according to the paper.

*Source: Bradenton Herald*

## State Attorney clears officials in investigation

COOPER CITY – The Broward County State Attorney’s Office determined that Cooper City officials did not violate Florida’s Sunshine Law after a 14-month investigation, according to the South Florida Sun-Sentinel.

The investigation focused on an April 2012 meeting in the city manager’s office to discuss recreational playing field maintenance, the paper reported. Some city commissioners, city staff and representatives of the Optimist Club at Cooper City attended the meeting.

City Commissioner John Sims said he

did not know about the meeting, so he did not attend, according to the paper. Sims claims the meeting wasn’t advertised on the city calendar or electronic signs at City Hall and he did not receive an email about the meeting.

Sims said he did not find out about the meeting until seven months later when a supporter, Skip Klauber, showed him emails about the meeting Klauber received as part of an unrelated public records request, the paper reported. Klauber then contacted the State Attorney’s Office.

Former Mayor Debby Eisinger was at

the meeting and said the meeting did not violate the Sunshine Law, according to the paper.

Assistant State Attorney Timothy Donnelly told the paper that the city technically met the requirements of the Sunshine Law by posting a notice of the meeting at City Hall, the paper reported.

“As an aside, while posting a notice in City Hall may not be the best means of announcing a commission meeting, it does technically comport with the Sunshine Law,” Donnelly said.

Source: *South Florida Sun-Sentinel*

## Meetings raise Sunshine questions

PALM BEACH COUNTY – Closed meetings between the Palm Beach County Inspector General’s Office and several city managers have raised questions about the Sunshine Law, according to the South Florida Sun-Sentinel.

John Bowers, a former auditor at the Inspector General’s Office, wrote to the State Attorney’s Office and the county’s Ethics Commission questioning whether these closed meetings violated Florida’s Sunshine Law, the paper reported.

Bowers said since the group meets regularly and provides feedback to the inspector general, it is an advisory

committee subject to the Sunshine Law, according to the paper.

Inspector General John Carey said the group does not qualify as an advisory committee because the meetings are optional and they never discuss ongoing investigations or audits, the paper reported. Carey said the meetings improve communication between local governments.

Palm Beach County created the Inspector General’s Office in 2009 as a response to local government corruption scandals, according to the paper.

Source: *South Florida Sun-Sentinel*

## Cabinet hires lawyer, raises questions

TALLAHASSEE – Gov. Rick Scott and members of the Cabinet hired a law firm to represent them in a pending lawsuit filed by a coalition of media organizations, according to the Tampa Bay Times.

The four Cabinet officials voted in a nine-minute meeting to spend up to \$50,000 in taxpayer dollars to hire the law firm Shutts & Bowen and attorney Daniel Nordby to represent them in the case, the paper reported.

The meeting to approve the lawyers has raised additional Sunshine Law questions, the paper reported. Critics say the selection of a lawyer should have been conducted in an open meeting.

Nordby was recommended in the Cabinet meeting by Attorney General Pam Bondi after consulting with her staff, according to the paper. Florida’s Sunshine Law may require the meeting to be open if the Cabinet delegated its decision-making authority in hiring a lawyer to Bondi.

Bondi and her staff said no Sunshine Law violation occurred because she recommended Nordby on her own, the paper reported. If Bondi relied on her staff’s input to make the decision, the process should have been conducted in a public meeting, according to the paper.

Scott and the other Cabinet members have hired lawyers to represent them individually in the lawsuit, which could cost taxpayers hundreds of thousands of dollars, according to the paper. Shutts & Bowen will be representing the Cabinet as a whole.

Source: *Tampa Bay Times*

## White House removes regulation

WASHINGTON, D.C. – The White House deleted a federal regulation subjecting its Office of Administration to the Freedom of Information Act, according to USA Today.

The Office of Administration responded to FOIA requests for 30 years, according to the paper. However, the White House said the removal of the regulation is consistent with court rulings that indicate the office is not subject to FOIA, the paper reported. Other offices within the White House are exempt from FOIA.

A federal appellate court in 2009 ruled that the office was not subject to FOIA because it handles only administrative tasks under the president and his staff and therefore lacked independent authority to be subject to

FOIA, the paper reported.

The White House said that the repeal of the rule was merely an administrative change and would have no impact on the administration’s FOIA compliance, according to the paper.

The rule change was criticized by open government advocates, the paper reported. Watchdog groups previously used records from the Office of Administration to learn more about how the White House works, according to the paper.

Many were suspicious of the timing of the change, which came during Sunshine Week, a national effort from news organizations and other groups to highlight the need for government transparency.

Source: *USA Today*

**FREEDOM  
OF INFORMATION**

## Court limits media coverage

JACKSONVILLE – Fourth Judicial Circuit Chief Judge Mark Mahon’s first administrative order narrowed the definition of media and limits some from covering courts, according to The Florida Times-Union.

The order defines both traditional media and digital media, the paper reported.

Traditional media includes print and broadcast “that reach or influence people widely,” the order states.

The order defines digital media as “an online entity which was a previously established” site and “has previously covered the judicial branch” for six months, according to the order.

Those qualifying as media will be issued a “Media Authorization Card” to cover courts and reporters will have to submit an application to receive the card, according to the order.

Those entities that do not qualify as “media” under the order’s definition may not be able to use laptops or other electronic devices in court, the paper reported.

The order was issued in response to attempts by a website to film a government activist’s misdemeanor trial, the paper reported.

*Source: The Florida Times-Union, Administrative Order No. 2015-1 filed March 5, 2015*

**COURTS**

## Group asks for Bush email probe

TALLAHASSEE – A group has asked the Miami-Dade State Attorney’s Office to investigate former Gov. Jeb Bush for not releasing all his work-related emails when he left office, according to the Tampa Bay Times.

The American Democracy Legal Fund requested State Attorney Katherine Fernandez Rundle to begin an investigation into whether “Mr. Bush’s violation was knowing, willful and therefore subject to criminal punishment,” according to the group’s complaint.

The complaint relies on state records, which indicate that Bush turned over his emails to the State Department in seven groups after leaving office, the paper reported. The last group of emails was submitted in 2014, containing approximately 25,000 emails from 2002-03.

Bush was required under Florida law to turn over records when he left office, according to the paper.

“Even if Florida law allowed additional time for a public officer to review and

submit public records after leaving office, no credible legal argument can be made that submission of records seven years after leaving office is permissible under the law,” the complaint states.

A spokeswoman for Bush said he complied with the law and turned over all his emails to the Crist administration, the paper reported. The emails went into the state archive, but Bush’s personal emails had to be filtered out.

The American Democracy Legal fund argued that Bush “carefully controlled the timing of his delivery of public records” because of his potential future presidential campaign, according to the complaint.

“Members of the public have a legitimate interest in timely reviewing Mr. Bush’s records to judge his potential candidacy for President,” the complaint states.

*Source: Tampa Bay Times, Complaint Re: Violation of Florida Public Records Law by Former Governor Jeb Bush, Sent March 19, 2015*

## Official charged with violation

SANTA ROSA COUNTY – Santa Rosa County Commissioner Bob Cole was charged with violating Florida’s Sunshine Law, according to the Pensacola News Journal.

State Attorney Bill Eddins recommended Cole face the maximum \$500 fine for a non-criminal violation of the law, the paper reported.

Cole admitted he discussed a matter up for vote by the Downtown Redevelopment Advisory Board before a public meeting, according to the paper. Board member

Elba Robertson asked Cole whether he intended to nominate someone for an open board position, and Cole answered yes.

Florida’s Sunshine Law requires boards and other governing bodies to discuss public business and vote at properly noticed public meetings.

Robertson did not face charges and resigned from the board, the paper reported. Cole will have an opportunity to appear before a judge to dispute the charge.

*Source: Pensacola News Journal*

**ACCESS MEETINGS**

### THE BRECHNER REPORT

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## Sunshine suit voluntarily dismissed

EUSTIS – A lawsuit against the city of Eustis alleging the city violated Florida’s Sunshine Law was voluntarily dismissed, according to the Orlando Sentinel.

The suit was filed by Bob Panuska, who claimed that the city did not advertise a meeting at which it discussed and took action on a pair of pending lawsuits against the city, the paper reported.

City Attorney Derek Schroth said the city advertised that commissioners would

meet at a closed meeting to discuss the two pending lawsuits, according to the paper.

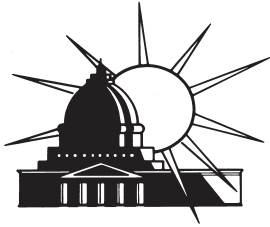
Florida’s Sunshine Law allows governing bodies to hold closed meetings to discuss pending legal action.

Schroth asked Panuska to dismiss the lawsuit, calling it “frivolous” and “devoid of any merit,” the paper reported. Panuska agreed to dismiss the lawsuit.

*Source: Orlando Sentinel*

**ACCESS MEETINGS**

May 2015



**UF** UNIVERSITY of  
FLORIDA

## Why strengthening the FOI Act is so important

President Obama has routinely promised greater transparency within the federal government. Now, Congress is making strides towards achieving this critical goal.

The House of Representatives and Senate are currently considering nearly identical bills to strengthen the Freedom of Information Act, which provides the general public, including journalists, with access to federal government records.

This legislation has received broad support across media organizations, including the Sunshine in Government Initiative, a coalition of which the Newspaper Association of America is a member. And here's why:

**Openness instead of secrecy would be the "default" key within the government.**

**The**  
**Back Page**  
By *Caroline Little*

The legislation would require agencies to release documents under a "presumption of openness," reaffirming the principle that information should never be

kept confidential to protect government interests at the expense of the public. Agencies would need to prove specific harm that could result from disclosures before withholding documents. While this policy has been in place since 2009, the legislation would ensure future administrations honor this objective for openness.

**The process of obtaining FOIA records would be much more efficient.**

Citizens and journalists would receive requested information in a more timely fashion and would be updated on the status of their request or reason for denial. Federal agencies would be allowed to withhold information on policy deliberations for only 25 years – currently, there is no limit.

**More records would be available.**

The legislation would require agencies to post frequently requested information online. This will give citizens and journalists more timely access to key information and a deeper understanding of what the government is doing – or not doing.

**Why is this important?**

The Freedom of Information Act remains a powerful, though



*Caroline Little*

currently inefficient, tool to obtain public information. Last year, several key stories were brought to light as a result of reporters' FOIA record requests.

The Associated Press was able to show that people accused of Nazi war crimes had continued receiving Social Security payments after leaving our country. In another instance, a reporter reviewing military ballistics tests found that the Marine Corps had issued armored vests that failed to protect against bullets – and 5,277 vests were quickly recalled, perhaps saving lives.

Likewise, records obtained through FOIA revealed that some firefighter safety equipment failed to work properly when exposed to heat or moisture, rendering it ineffective in crisis situations.

Without these records and journalists' diligent research, none of this would have been brought to public attention. Our armed forces and firefighters may have been directly harmed as a result.

The Freedom of Information Act was enacted in 1966. It remains critical for creating and preserving an open and accountable government. However, it must be updated to keep up with changing technology and a persistent mindset within federal agencies that information belongs to the government not the general public.

Congress came very close to passing FOIA reform legislation last year before the end of the 113th Congress. Now, members in both the Senate and House are working in a bi-partisan fashion to move these bills forward in the new Congress. The Senate Judiciary Committee unanimously approved its FOIA reform bill, S. 337, which is sponsored by Senators John Cornyn, Patrick Leahy, and Judiciary Committee Chairman Charles Grassley. The House bill (H.R. 653), which is sponsored by Representatives Darrell Issa and Elijah Cummings, was reported out of committee last week.

We applaud the bills' sponsors and the congressional leadership for turning their attention to this good government legislation. We hope that this momentum bodes well for bipartisan, bicameral action early in the new Congress.

*Caroline Little is the president and CEO of the Newspaper Association of America, the industry's largest trade organization.*