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# THE BRECHNER REPORT

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Volume 39, 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 2015*

## Scripted meetings lead to board resignations

JACKSONVILLE – Five board members of the Jacksonville Electric Authority have resigned after The Florida Times-Union discovered its practice of distributing scripted talking points before meetings, in violation of Florida’s Sunshine Law, the paper reported.

Mayor Lenny Curry requested JEA’s entire seven-member board to submit resignations after learning that Chairwoman Helen Albee read from a script at an August board meeting, according to the paper. The Times-Union

discovered the script, detailing a vote on an executive officer’s salary raise and contract extension, the paper reported. The script also contained details relating to a pilot program that could affect how customers are charged for electricity, according to the paper.

The Times-Union discovered additional scripts from June and July board meetings

through emails that JEA provided in response to a records request, the paper reported.

The board resignations came sooner than Mayor Curry had asked, leaving the board unable to conduct its regularly scheduled October meeting, according to the paper.

Curry has already named replacements for two of the members, who must be approved by City Council, the paper reported.

*Source: The Florida Times-Union*

## Citizen group files Sunshine suit

JACKSONVILLE – A citizen group has filed a lawsuit against several Jacksonville City Council members for violating Florida’s Sunshine Law during a firefighters’ union meeting, The Florida Times-Union reported.

The Concerned Taxpayers of Duval County filed the lawsuit after the Times-Union discovered that firefighters’ union president, Randy Wyse, sent text messages to several council members during a meeting, in attempt to sway a vote, the paper reported.

According to records obtained by the paper, Wyse asked three council members to vote in favor of reallocating \$320,000 from the city’s drainage system to prevent fire department demotions, the paper reported.

In their lawsuit, the group asks a judge to fine the council members \$500 and void the council’s vote, according to the paper.

Council President Greg Anderson has also responded to the controversy by issuing a new rule that bans cellphones during all public council meetings, the paper reported.

*Source: The Florida Times-Union*

## Clinton can’t merge FOIA cases

WASHINGTON – Federal district court judges in Washington denied the Justice Department’s motion to combine aspects of nearly 40 Freedom of Information Act lawsuits against Hillary Clinton and her aides, Politico reported.

Scheduling and record preservation issues in lawsuits related to Clinton’s emails are pending before 17 different judges, the website reported. The Justice Department, acting on behalf of the State Department, moved to have the

issues presented to a single federal judge, according to the website.

Chief Judge Richard Roberts rejected the motion because the court had already entered orders for several lawsuits that had been filed prior to the discovery of Clinton’s private email server, the website reported.

Most of the plaintiffs in the lawsuits, including media outlets, opposed the government’s effort to combine the cases, according to the website.

*Source: POLITICO*

## Judge rules in Sunshine case

COLLIER COUNTY – A Collier County circuit judge dismissed a lawsuit against the school district’s superintendent, who had been accused of violating Florida’s Sunshine Law, according to the Naples Daily News.

Steven Bracci, a parent and local attorney, filed the lawsuit against Superintendent Kamela Patton in August for allegedly discussing a potential school wellness initiative outside of a public meeting, the paper reported.

Collier Circuit Judge Hugh Hayes threw out the suit and said Patton did not create the initiative’s committee and is not subject to the state’s Sunshine Law because she is not an elected official, according to the paper.

Judge Hayes said the outcome in the case would have been different if Patton was an elected official and had organized the committee, the paper reported.

*Source: Naples Daily News*

ACCESS  
MEETINGS

FREEDOM  
OF INFORMATION

## Army generals discuss delay in FOIA response

WASHINGTON – Two Army generals discussed trying to kill a New York Times story by withholding information the paper sought through a Freedom of Information Act request, The New York Times reported.

According to an executive summary of a meeting at the Pentagon, Army surgeon general Lt. Gen. Patricia D. Horoho suggested that the West Point superintendent, Lt. Gen. Robert L. Caslen Jr., delay responding to The Times'

FOIA request seeking information on concussions resulting from mandatory boxing classes at West Point, according to the paper. Horoho instead recommended to Caslen that the Army should try to persuade The Wall Street Journal or USA Today to first publish a story on a more favorable study on concussions, the paper reported.

The executive summary quotes Horoho as saying, "I recommend you let us publish this article BEFORE you release

the FOIA to the NYT reporter," according to the paper. The Army document also reveals Horoho discussing how similar tactics of manipulating media coverage had previously been successful, the paper reported.

Both generals felt the executive summary misrepresented their discussion on the matter, and Horoho said the document misquoted her, according to the paper.

*Source: The New York Times*

## WikiLeaks source sues Justice Department over records

WASHINGTON – Pvt. Chelsea Manning, former Army intelligence analyst convicted of disclosing classified information to WikiLeaks, is suing the Justice Department for failing to respond to her Freedom of Information Act requests, according to The Washington Times.

Manning, formerly known by her birth name, Bradley Manning, submitted FOIA requests with the Justice Department in February 2014 to uncover any documents, papers, letters, and other material relating to the FBI's investigation of the WikiLeaks source, the paper reported.

The government has failed to respond to Manning's requests, claiming the

documents fall under an exemption for information that has been "compiled for law enforcement proceedings," according to the paper.

Nancy Hollander, an attorney for Manning, says the government has no reasonable basis to withhold the records because the government cannot prosecute Manning in federal criminal court, the paper reported.

Manning is currently serving a 35-year prison sentence for espionage, theft, computer fraud and other charges related to her involvement in WikiLeaks' disclosure of state secrets, according to the paper.

*Source: The Washington Times*

## City revises records policy that violated Public Records Law

NORTH PORT – The city of North Port has revised its public records policy, following criticism that its original policy violated Florida's Public Records Law, according to the Charlotte Sun.

The original public records policy, which the city adopted in September, limited an "entity's" request to 15 "free" minutes and assessed a "special service charge" to requests exceeding the time limit, the paper reported. The policy applied to news organizations and private individuals, but implied that multiple reporters from the same news entity would have to share the 15 minutes among them each day, according to the paper.

The revised policy replaces the word "entity" with "request" in order to allow requesters to maintain anonymity, the paper reported.

According to a memo from City Manager Jonathan Lewis, the revised policy also explains that the post-15 minute charge aims to cover the cost for "extensive use of information technology resources, or the labor cost of the personnel providing the service that is actually incurred by the city of North Port," according to the paper. The memo also cites to a dramatic increase in public records request in the past four years, the paper reported.

*Source: Charlotte Sun*

## Official pleads no contest in Sunshine suit

SANTA ROSA COUNTY – Santa Rosa County Commissioner Bob Cole pleaded no contest to a Sunshine Law violation and will be fined the maximum \$500 fine allowed by law, according to the Pensacola News Journal.

Cole admitted he answered a fellow Downtown Redevelopment Advisory Board member's question outside a public meeting regarding a vacant position on the board, in violation of

Florida's Sunshine Law, the paper reported.

Even

though Cole supports the purpose of the Sunshine Law, he said the conversation at issue should not have constituted a violation of state law, according to the paper. He said that he answered the question without discussing the matter any further, the paper reported.

"All this stems from simply two words I said, which were 'yes, ma'am,'" Cole said. "There was no hidden discussion. There was no hidden message," the paper quoted him as saying.

Cole said he pleaded no contest to the charge because he didn't want to drag out the proceedings any further, the paper reported.

*Source: Pensacola News Journal*

**ACCESS  
RECORDS**

## Bills aim to limit public records suits

TALLAHASSEE – Florida lawmakers have proposed legislation aimed at limiting what they consider to be frivolous public records lawsuits, The Palm Beach Post reported.

Sen. Wilton Simpson and Rep. Halsey Beshears introduced the bills in an attempt to control “scammers” who file large quantities of public records requests in order to sue noncompliant cities and counties for large settlements, according to the paper.

Specifically, Simpson and Beshears aim to curb the amount of lawsuits filed by the O’Boyle Law Firm in Deerfield Beach, which has prepared more than 100 lawsuits in 27 counties over public records, the paper reported.

Jonathan O’Boyle, head of the law firm, supports some aspects of the bills, including a requirement that governments publicize where records requests should be filed, the paper reported. However, O’Boyle is concerned about a part of the measure that would require people to send their requests to the government by certified mail because many people want to maintain anonymity, according to the paper. He also suggests that allowing email requests would be more efficient, the paper reported.

Source: *The Palm Beach Post*

## Improvement district officials charged in Sunshine Law case

SEBRING – Three supervisors of the Sun ’n Lake of Sebring Improvement District have been charged with violating Florida’s Sunshine Law, according to Highlands Today.

Chairman Curt McCullough, Richard Miller and David Halbig were all charged with multiple counts of violating the Sunshine Law, the paper reported.

In response to a public records request, Assistant State Attorney Steve

Houchin released complaint affidavits claiming the supervisors violated the Sunshine Law by privately discussing agency matters, including contracts and a \$3.5 million capital improvement decision, according to the paper.

Houchin said the supervisors face second-degree misdemeanors that could land them in jail for 60 days and fined \$500 for each offense, the paper reported.

All three supervisors pleaded not guilty in county court and await a pre-trial conference date, the paper reported.

Source: *Highlands Today (Sebring)*

ACCESS  
MEETINGS

## City will hire outside resource to access phone records

FORT MYERS – The city of Fort Myers will hire a private company to search for public records on a council member’s personal cell phone, The News-Press reported.

The News-Press requested council members’ text messages, but Councilwoman Terolyn Watson’s city-issued cell phone had no messages relating to city business, the paper reported. Currently the city lacks the necessary technology to properly analyze Watson’s

personal cell phone for text messages that should be public records, according to the paper.

Watson planned on visiting her mobile service provider to see if the messages could be retrieved, the paper reported. “I don’t have anything to hide,” she said.

IT Director Jim Barfield said he does not know how much the service to retrieve the text messages will cost the city, the paper reported.

Source: *The News-Press (Fort Myers)*

## City changes open email policy

PORT ORANGE – Port Orange’s new city manager will not post his emails on the city’s website, unlike his predecessor, according to The Daytona Beach News-Journal.

City Manager Jake Johansson announced at a City Council meeting that anyone who wants copies of his emails will have to submit a formal request under Florida’s Public Records Law, the paper reported.

Johansson said his justification for the new policy is that it would take almost three hours per week for staff to make his emails available online, according

to the paper. The city will now charge \$15 per hour of staff time to respond to requests that exceed 30 minutes, the paper reported.

While some people have complained about the shutdown of email uploads, there is no legal requirement that the city manager’s emails be posted online, according to the paper.

Former City Manager Ken Parker posted his emails onto the city’s website on a daily basis since 2010, according to the paper. The emails were the third-most visited link on the website after the home page and customer service, the paper reported.

Source: *The Daytona Beach News-Journal*

OPEN  
GOVERNMENT

### THE BRECHNER REPORT

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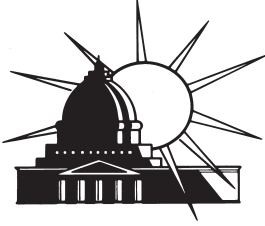
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*The Brechner Report* is published 12 times a year under the auspices of the University of Florida Foundation. *The Brechner Report* is a joint effort of The Brechner Center for Freedom of Information, the University of Florida College of Journalism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

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November 2015



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## Trespass misuse may violate Sunshine Law

Police surrounded retired Tampa firefighter Dennis Ribaya when he arrived in the parking lot for his pension board's July 2012 public meeting. The cops gave Ribaya, then 66, a no-trespassing warning: Leave now and don't come back for 90-days. He left.

Pension board chairman Patrick Gray, a Tampa police sergeant, invoked the trespass law, claiming that Ribaya had said a "foul word" at the board's previous meeting, which a few attendees said was disruptive. Gray said in his complaint that he acted under a pension board rule requiring a 90-day exclusion for anyone who "disrupted" a board meeting.

An audio recording of the meeting revealed that Ribaya did not curse nor disrupt the meeting. The board's minutes reported no disruption.

Ribaya requested that the board hold a hearing on this matter or move its meetings so he could attend. When the board refused to do either, Ribaya sued in Circuit Court seeking a ruling that his 90-day exclusion violated the Sunshine Law. (Ribaya v. The Board of Trustees of the City Pension

Fund for Firefighters and Police in the City of Tampa, Case No. 12-CA-013928, Thirteenth Judicial Circuit, Hillsborough County, Florida).

Ribaya asked the court to void all formal actions taken by the board during his exclusion.

He claimed he had neither cursed during the meeting nor disrupted it and that a 90-day exclusion was punitive and inconsistent with Florida's constitutional public meetings mandate. He also argued that cursing during a meeting would be constitutionally protected speech and not, by itself, a disruption or justification for the no-trespass warning.

The National Freedom of Information Coalition awarded Ribaya a grant to pay his filing and transcript fees.

After suit was filed and Ribaya's exclusion ended, the pension board abolished the 90-day provision it used to ban Ribaya from three monthly meetings. Under the new rule, only someone who disrupted a meeting and refused to stop could be excluded, and then only for the balance of that meeting.

Arguing Ribaya's exclusion had ended and the rule change



David M. Snyder

made the claim moot, the board asked Circuit Judge Christopher Sabella to dismiss the suit. The board contended that Ribaya had no Sunshine Law claim and should instead sue for injury caused by his exclusion. Judge Sabella agreed and dismissed the suit in August 2013. Ribaya appealed.

The appeal court disagreed with the trial court and became the first Florida court to find that misuse of no-trespassing laws could violate the Sunshine Law.

Writing a unanimous decision, Judge Chris Altenbernd stated, "The need to maintain order at public meetings is critical to the effective functioning of a government that values public input and welcomes sunshine at such meetings. But policies to assure order have the potential to be misused to silence opposing views. Without prejudging the issue in any manner, we cannot say that the exclusion of Mr. Ribaya was or was not a violation of" the Sunshine Law. (Ribaya v. The Board of Trustees of the City Pension Fund for Firefighters and Police in the City of Tampa, 162 So. 3d 348, 355 (Fla. 2d DCA 2015)).

As soon as the case was sent back for trial on its merits, the pension board initiated settlement discussions. First, it "cured" its Sunshine Law violations by holding special meetings in July 2015 to reconsider and readopt the same actions it took from July to September 2012. And while denying wrongdoing, it paid Ribaya's litigation costs, \$1,239.30; his attorneys' fees, \$120,000; and \$15,000 for release of any injury claim. Public records reveal the board's attorneys were paid \$180,538.78.

Gray did not explain on the record why he excluded Ribaya, but in transcripts of a closed-door litigation strategy meeting he said he acted on complaints and did what board rules required on the advice of board counsel.

For his part, Ribaya believed he was targeted because he uses Florida's Sunshine laws to monitor his pension board and has been openly critical of some of its actions.

Motives aside, however, restoring sunshine to the City Pension Fund for Firefighters and Police in the City of Tampa cost Tampa taxpayers \$318,146.08.

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*David M. Snyder, a newspaper journalist turned media lawyer, represented Dennis Ribaya throughout the case. Snyder teaches ethics and law at the University of South Florida St. Petersburg and continues to practice media law.*