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# THE BRECHNER REPORT

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Volume 40, Number 1 ■ 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

January 2016

## Proposed bills may destroy Public Records Law

TALLAHASSEE – Proposed legislation may make it more difficult for citizens to take public records disputes to court, according to the Tallahassee Democrat.

Sen. Rene Garcia, R-Hialeah, and Rep. Greg Steube, R-Sarasota, introduced SB 1220 and HB 1021,

which would amend a provision of the state's Public Records Law, the paper reported. Instead of the current mandate

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for courts to award attorney's fees in cases where governments unlawfully refuse to provide public records, the proposed bills say courts "may" award such fees, according to the paper.

Casey Cook, a lobbyist for the Florida League of Cities who sponsors the bills, says the measure aims to curb unethical and frivolous lawsuits, the paper reported.

However, the First Amendment Foundation President Barbara Petersen worries that the proposed legislation

would do more harm than any other public records exemption passed in the last 25 years, according to the paper. "No attorney would take a case if they weren't going to get mostly assured that they get their fees. And no citizen is going to file suit," she said.

Rep. Steube claims the proposed legislation does not prevent plaintiffs from getting attorney's fees, but merely gives courts the option to decide, the paper reported.

*Source: Tallahassee Democrat*

## Hunting license bill shields IDs

TALLAHASSEE – Proposed legislation will exempt the identities of people who have purchased hunting and fishing licenses from Florida's Public Records Law, according to the Tallahassee Democrat.

Sen. Alan Hays, R-Umatilla, introduced SB 1364, which would make confidential personal information held by the Florida Fish and Wildlife Conservation Commission.

Rep. Tom Goodson, R-Titusville, filed the companion House bill, claiming confidentiality is a "public necessity," according to the paper.

The bills' sponsors maintain that public access to identifying information

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increases the risk of identity theft, the paper reported. Hays also says the bill is a proactive approach to the regulation of firearms and the protection of the Second Amendment, according to the paper.

First Amendment Foundation President Barbara Petersen says there is no proof that accessing hunting and fishing licenses increases the likelihood of identity theft, the paper reported.

The bills follow a dispute surrounding the exemption of more than 100 names from the list of people who purchased licenses for Florida's bear hunt last October, according to the paper.

*Source: Tallahassee Democrat, SB 1364*

## Public utility sued over records

PENSACOLA – A Pensacola property owner filed a lawsuit against the Emerald Coast Utilities Authority over a \$595 bill for processing a public records request, according to the Pensacola News Journal.

ECUA originally gave Kyle Kopytchak an estimate of less than \$100 to process his public records request, estimating it would take four hours to complete, at a cost between \$18 and \$24 an hour, the

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paper reported.

Almost two months after his request, Kopytchak received an invoice worth \$595 for 24 hours' worth of staff time, according to the paper.

Kopytchak's lawsuit seeks to have ECUA accept payment only for the initial four-hour estimate and requests attorney's fees and court costs, the paper reported.

*Source: Pensacola News Journal*

## IRS charged in FOIA case

SAN FRANCISCO – A federal judge in the Northern District of California charged the Internal Revenue Service over \$239,000 in attorney's fees and costs for refusing to comply with a Freedom of Information Act request.

Public.Resource.org, a nonprofit organization whose mission includes facilitating public access to government records, originally sued the IRS in June 2013 over access to Form 990s for nine tax-exempt organizations in their original Modernized E-File (MeF) format.

In January 2015, the same court ordered the IRS to produce the documents, despite the IRS' argument that it did not have the resources to provide MeF documents without undue burden.

Public.Resource.org filed a motion for attorney's fees in July 2015, and was recently awarded \$238,125 in attorney's fees and \$1,272 in costs, for a total of \$239,397.

*Source: Public.Resource.org v. United States Internal Revenue Service, Case No. 13-cv-02789-WHO*

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## School board and student's father in legal battle

ST. JOHNS COUNTY – The St. Johns County School Board and Jeff Gray, a father of three children who attend schools in the county, have sued each other over the school district's public records policy and Gray's alleged violations of the policy, The St. Augustine Record reported.

Gray, a correspondent for Photography Is Not a Crime, claims the school board's policy regarding public records requests

does not comply with Florida's Public Records Law and infringes his access rights, the paper reported.

The school board claimed that Gray's interests are not in obtaining records but in filing frivolous lawsuits, according to the paper. It further alleges that Gray has acted antagonistically towards the school district's employees, especially female employees, who claim Gray has intimi-

dated and threatened them in order to gain access to records, the paper reported.

According to Gray's complaint, the dispute arose after a district employee required Gray to identify himself, despite the school district's policy, which indicates that a person requesting public records does not have to show identification, the paper reported.

Source: *The St. Augustine Record*

## Court reverses attorney's fees award in public records lawsuit

TALLAHASSEE – A three-judge panel for the 1st District Court of Appeal overturned a decision to award attorney's fees to a group that filed a public records lawsuit against the Florida Department of Economic Opportunity, according to The Ledger (Lakeland).

The matter arose after Consumer Rights LLC filed a lawsuit against the department for failing to respond to a public records request, according to the opinion. While the department eventually provided the records, a Leon County circuit judge

ruled that Consumer Rights was entitled to attorney's fees because the department unjustifiably delayed fulfilling the request.

However, Chief Judge L. Clayton Roberts, writing for the appellate court, found that Consumer Rights had failed to comply with a notice requirement in seeking the attorney's fees and, therefore, was not entitled to those fees, the paper reported.

Source: *The Ledger (Lakeland)*, State of Florida, Dept. of Economic Opportunity v. Consumer Rights, LLC, No. 1D15-0383

## Database for drones raises FOIA issues

WASHINGTON – A plan by the Federal Aviation Administration to set up a nationwide drone registry has raised concerns about how much access the public will have to the planned database, Politico reported.

A task force made up of retailers and drone manufacturers wants the information to be exempt under the Freedom of Information Act. It recommended the FAA "prevent the release of any personal information that the agency is not specifically required by law to disclose," Politico reported.

The FAA, which plans to make drone

registration mandatory, said in a Privacy Act notice that the public will not be able to obtain more than drone owners' names and addresses, according to Politico. However, the documents don't indicate how the FAA will handle FOIA requests for the whole database, Politico reported.

According to media lawyers and transparency advocates, the FAA does not have the authority to block access to the information and override FOIA, Politico reported.

"FOIA is an act of Congress and takes precedence over any agency interpretation. Even if FAA would like its advisory committee to override the principles of FOIA, it just can't do it," Kurt Wimmer, General Counsel for the Newspaper Association of America, told POLITICO.

Source: *POLITICO*

# FOIA

## Court rules tattooing has First Amendment protections

ATLANTA – The 11th Circuit Court of Appeals struck down a Key West ordinance, which prohibits tattoo establishments in the city's historic district.

The court joins the 9th Circuit Court of Appeals in holding that the act of tattooing is protected under the First Amendment, reasoning that tattooing is virtually indistinguishable from other forms of protected artistic expression.

The case arose after the City of Key West barred Brad Buehrle from opening a tattoo shop, pursuant to the ordinance, which strictly limits the number of tattoo establishments allowed in the historic district. Buehrle petitioned the district court ruling, which found the ordinance to be a reasonable time, place, and manner restriction.

Appellate Judge Jill Pryor, writing for the court, concluded the city failed to demonstrate the ordinance served a significant governmental interest, as required to justify a time, place, and manner restriction.

"Particularly glaring is the lack of evidentiary support for the City's assertions concerning tattooing's purported effect on tourism," wrote Pryor. The fact that Key West

prohibited tattoo shops in the historic district for forty years does not mean that allowing more shops in the area would cause the district's value to deteriorate, she reasoned.

"The First Amendment requires more," Pryor added.

Source: *Buehrle v. City of Key West*, No. 14-15354

# FIRST AMENDMENT

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# THE BRECHNER CENTER

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## 2015 FREEDOM OF INFORMATION REPORT

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### Gov. Scott settles multiple access lawsuits

TALLAHASSEE – Gov. Rick Scott, his cabinet members, and the state settled multiple lawsuits involving Florida-in-the-Sunshine laws in 2015, at a large cost to taxpayers.

In June, Scott and his cabinet members agreed to settle a lawsuit filed by more than

a dozen media organizations that alleged the Cabinet broke the Sunshine Law in firing a Florida Department of Law Enforcement commissioner, The Miami Herald reported.

Legal fees in this case cost taxpayers over \$228,000, according to the paper.

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The Cabinet also agreed to other terms, including the expansion of Sunshine Law training for their staffs, the paper reported.

Two months later, Scott and the state agreed to pay \$700,000 to settle a long-standing dispute between Scott and Tallahassee attorney Steven Andrews, The Associated Press reported. The settlement is believed to be one of the largest payments made in a public records case in Florida's history, according to the AP.

The settlement did not include Andrews' attorney fees, according to The Miami Herald. But Scott paid his own lawyers an additional \$300,000 for his

defense related to this settlement and the lawsuit settled in June, the paper reported.

The money for the settlement came from Scott's office, Attorney General Pam Bondi's office, the Department of Environmental Protection and the Department of State, The Miami Herald reported.

Scott's administration defends the use of taxpayer money to settle the disputes, the AP reported. "Florida law has long recognized that public agencies are entitled to have attorney's fees covered for actions arising from public duties," Schutz said.

*Source: The Miami Herald, The Associated Press*

### Florida counties will offer online court records

TALLAHASSEE – The Florida Courts Technology Commission told 58 Florida counties they had to post court records online, The Florida Times-Union reported.

The Florida Supreme Court told county clerks in 2004 they could not post records online because of security concerns, the paper reported. In 2007, the Court allowed Manatee County to begin a pilot program to put court records online, which has been operating since.

The Florida Supreme Court lifted the ban on posting online records for all

counties in 2014. Since that order, the Commission has been working to approve all counties for posting records online, the paper reported.

The Commission mandated in its order that clerks begin posting records online by July 1, 2015, according to the paper. The records include lawsuits, arrests, motions, judge's orders and more.

"It's been a long time coming," said Carol LoCicero, an attorney for about 60 media organizations asking the Florida

Supreme Court for online records access. "We're glad to see anything that increases transparency in the judicial system," she said. "The easier it is to get access to

government records, the better. If we can make access easier, then we have an obligation to do that.

For some people it's about whether they'll be able to access it at all. If you're disabled, hopping down to the courthouse isn't realistic."

*Source: The Florida Times-Union*

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### Scripted meetings lead to board resignations

JACKSONVILLE – 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

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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 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.

*Source: The Florida Times-Union*

## Body cameras, sex crime victims among exemptions

TALLAHASSEE – The following is a summary of 12 Public Records and Open Meetings Law exemptions passed in 2015. Copies of the legislation are available at the Florida Legislature's website ([www.leg.state.fl.us](http://www.leg.state.fl.us)). SB=Senate Bill; HB=House Bill; CS=Committee Substitute

**CS/HB 7 Minor Claim Settlements:** Creates an exemption for court records relating to the settlement of a claim to the guardianship of a minor or ward. Allows a guardian ad litem, a minor's attorney, or a minor over the age of 14 to access the records. Rep. Kathleen Passidomo (R-Naples) Approved by Gov. Scott June 2, 2015.

**CS/SB 144 Home Addresses-Impaired Practitioner Consultants:** Creates an exemption for the home addresses, telephone numbers, birthdates and photographs of current and former impaired practitioner consultants and their employees. Also exempts the names, addresses, birthdates, places of employment, and other similar information of their spouses and children. Sen. Aaron Bean (R-Jacksonville) Approved by Gov. Scott May 21, 2015.

**CS/HB 185 Home Addresses – U.S. Military Personnel:** Creates an exemption for the home addresses, telephone numbers and photographs of current and former service members of the U.S. Armed Forces, including the reserve component of the Armed Forces or National Guard who served after September 11, 2001. Also exempts similar information of their spouses and children. Requires them to request confidentiality in writing and requires reasonable steps be taken to protect such information from being accessible through other means. Rep. Matt Gaetz (R-Shalimar) Approved by Gov. Scott June 2, 2015.

**CS/SB 200 Email Addresses – Tax Collectors:** Creates an exemption for a taxpayer's email address held by a tax collector for the purpose of sending tax notices or obtaining consent to send tax notices. Sen. Jack Latvala (R-Clearwater) Approved by Gov. Scott May 14, 2015.

**CS/SB 248 Body Cameras/Recording of Law Enforcement Activities:** Creates an exemption for body camera recordings taken within the interior of a private residence, at a health care, mental health

care or social services facility, and in a place where a person recorded or depicted has a reasonable expectation of privacy. Allows for disclosure of the recordings in furtherance of a law enforcement agency's official duties and responsibilities, in furtherance of other governmental entities' official duties and responsibilities, and pursuant to a court order. Also requires that the recordings be retained for a minimum of 90 days. Sen. Chris Smith (D- Fort Lauderdale) Approved by Gov. Scott May 21, 2015.

**HB 467 Human Trafficking Victims:** Expands current exemption for criminal intelligence and criminal investigative information to include any information revealing the identity of human trafficking victims under the age of 18. Rep. Ross Spano (R-Riverview) Approved by Gov. Scott June 11, 2015.

**HB 469 Safe Houses – Sexual Exploitation Victims:** Creates an exemption for the location of safe houses, safe foster homes or other residential facilities serving victims of sexual exploitation. Also creates an exemption for information about the location of a residential facility offering services for victims of human trafficking. The exemption does not apply to facilities licensed by the Agency for Health Care Administration. Rep. Ross Spano (R-Riverview) Approved by Gov. Scott June 11, 2015.

**CS/SB 646 Florida ABLE Program:** Creates an exemption for personal financial and health information of participants in the ABLE program. SB 642 creates the Florida Achieving a Better Life Experience (ABLE) Act, requiring the Florida Prepaid College Board to establish a direct support organization to assist the disabled in saving money without losing eligibility for state and federal benefits. Sen. Lizbeth Benacquisto (R-Fort Myers) Approved by Gov. Scott May 21, 2015.

**CS/SB 716 Veterinary Medical Practice:** Creates an exemption for medical records relating to diagnosing the medical condition of any animal, prescribing, dispensing or administering drugs and appliances, and treatments for prevention, cure or relief of a condition

of any animal held by a state college of veterinary medicine. Sen. Alan Hays (R-Umatilla) Approved by Gov. Scott May 21, 2015.

**SB 7032 Identifying Information – Deceased Children:** Creates an exemption for information identifying surviving siblings of a child whose death occurred as a result of abuse or neglect verified by the State Child Abuse Death Review Committee. Also exempts the identity of a deceased child whose death was reported to the central abuse hotline but determined not to be the result of abuse or neglect. S. Health Policy, Approved by Gov. Scott May 21, 2015.

**CS/SB 7040 Email Addresses – Department of Highway Safety and Motor Vehicles:** Creates an exemption for email addresses collected by the Department of Highway Safety and Motor Vehicles. S. Transportation, Approved by Gov. Scott May 14, 2015.

**HB 7061 Florida RICO Act Investigations:** Creates an exemption for information relating to a RICO investigation until all investigations relating to the information are completed. H. Civil Justice, Approved by Gov. Scott June 2, 2015.

*The following seven exemptions were re-enacted in 2015 under the Open Government Sunset Review Act (OGSR), which requires review of exemptions every five years.*

**HB 7005 OGSR/Commission for Independent Education:** Reenacts, without modification, a limited exemption for investigative records of the Commission for Independent Education. Allows the Commission to close meetings of the probable cause panel at which such investigations are discussed. The meetings must be recorded and both the recordings and the record are subject to disclosure 10 days after a decision regarding probable cause. H. Government Operations Subcommittee, Approved by Gov. Scott June 11, 2015.

**SB 7008 OGSR/Licensure Examinations – Funeral Board:** Reenacts, without modification, an exemption for portions of meetings of the Funeral, Cemetery and Consumer Services Board at which licensure questions are discussed. S. Banking and Insurance, Approved by Gov. Scott May 21, 2015.

*-Continued on next page*

## LEGISLATIVE SESSION REPORT

## Few AGO opinions address Public Records Law

TALLAHASSEE – Attorney General Pam Bondi's office weighed in on five open government issues in 2015.

Below are summaries of these Florida Attorney General Advisory Legal Opinions. The full-text opinions are available at <http://www.myfloridalegal.com>.

**Voice recordings during 911 calls:** Is the recording and sound of a voice of the caller in a 911 call requesting emergency service considered “information which may identify any person,” which would make it confidential information?

**AGO 2015-01: No.** Sound recordings of a 911 call are public for purposes of

the Public Records Law. While section 365.171(12), Florida Statutes, makes confidential information obtained by a public agency which may identify a person requesting emergency services or reporting an emergency in a 911 call, there is no indication that the Legislature intended the exception to extend to information other than contact and personal identifying information.

**Undercover personnel public records exemption:** Is the City of Oviedo authorized to exempt from public disclosure the names of law enforcement officers of the city who are assigned to undercover duty when a request is made for a personnel roster of any type or a listing of all law enforcement officers of the city when the record does not

identify the officers as being assigned to undercover duty?

**AGO 2015-02: Yes.** Pursuant to section 119.071(4)(c), Florida Statutes, information regarding law enforcement officers who are assigned to undercover duty and whose names appear on personnel rosters or lists, without regard to whether the record reveals the nature of their duties, may constitute “information revealing undercover personnel of any criminal justice agency.” The Legislature’s determination that such information is exempt from disclosure and copying under the Public Records Law, conditions the release of exempt information upon a determination by the custodian that there is a statutory or policy

need for such disclosure.

**Dismissal with prejudice, settlement transcript records:** Does a dismissal with prejudice pursuant to a settlement agreement that confers continuing jurisdiction on the court to enforce the terms of the settlement agreement, which have not been fulfilled by the parties, operate to conclude litigation for purposes of section 286.011(8), Florida Statutes, to permit the release of a transcript of a settlement or litigation strategy session closed to the public while the litigation was ongoing?

**AGO 2015-03: Yes.** A public agency may only maintain the confidentiality of a record of a strategy or settlement meeting between a public agency and its attorney until the suit is dismissed with prejudice

or the applicable statute of limitations has run. Even if the court has retained jurisdiction to enforce the terms of the settlement agreement, a dismissal with prejudice marks the conclusion of the litigation, and section 286.011(8), Florida Statutes, requires that the transcript shall be made part of the public record.

**Unopened job applications:** Are sealed job applications, which were received and rejected by the Suwannee Valley Transit Authority, public records subject to inspection and copying?

**AGO 2015-10: Yes.** Job applications are public records received by the public agency in the usual course of business and are subject to inspection and copying under section 119.07, Florida Statutes, once they are received. An agency may not “seal” job applications or request that they be submitted as “sealed” records to exclude public access.

**Attendance of litigant in shade meetings:** Is the mayor of Port St. Lucie, who is a named defendant in two lawsuits filed against the City and various City officials, prohibited from attending “shade meetings” with counsel to discuss the litigation?

**AGO 2015-13: No.** Section 286.011(8), Florida Statutes, does not prohibit the mayor, who is a voting member of the city council from attending meetings between the city council and its attorney to discuss settlement negotiations and/or strategy related to litigation expenditures in connection with the pending lawsuits in which the council is a party.

## ATTORNEY GENERAL OPINIONS

## LEGISLATIVE REPORT CONTINUED

**SB 7010 OGSR/Examination Techniques – Office of Financial Regulation:** Reenacts, with minor modifications, an exemption for information that would reveal examination techniques or procedures used by the Office of Financial Regulation. S. Banking and Insurance, Approved by Gov. Scott May 21, 2015.

**HB 7011 OGSR/Personal Information – Public Transit Providers:** Reenacts the exemption for personal identifying information held by a public transit provider. H. Government Operations Subcommittee, Approved by Gov. Scott June 11, 2015.

**SB 7012 OGSR/Credit History and Credit Scores – Office of Financial Regulation:** Reenacts, without modification, an exemption for credit history and credit score information related to the licensing of mortgage brokers and lenders in compliance with federal law. S. Banking and Insurance, Approved by Gov. Scott May 21, 2015.

**SB 7016 OGSR/Identifying Information – Minors:** Reenacts, without modification, an exemption for information that would identify a minor petitioning a circuit court for a judicial waiver under the Parental Notice of Abortion Act. S. Judiciary, Approved by

Gov. Scott May 21, 2015.

**CS/SB 7034 OGSR/Identifying Information – Stalking Victims:** Reenacts, without modification, an exemption for the names, addresses and telephone numbers contained in voter registration records of persons who are victims of stalking or aggravated stalking if the victim complies with procedures for registering with the Office of Attorney General. S. Ethics and Elections, Approved by Gov. Scott May 21, 2015.

Sources: Florida First Amendment Foundation (<http://floridafaf.org>), <http://www.flsenate.gov>, <http://www.myfloridahouse.gov>

## Senate approves 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 exempts any email address used by tax collectors to send tax notices from Florida’s Public Records Law, 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*

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## Court’s dismissal of Dorworth’s public meetings charge upheld

ORLANDO – A county judge in Orlando upheld a decision to throw out a charge of violating the Sunshine Law against former state Rep. Chris Dorworth, according to the Orlando Sentinel.

Orange County Judge Alicia L. Latimore agreed with a ruling from October 2014, stating in a one-page opinion that Dorworth had a First Amendment right to speak with

members of the Orlando-Orange County Expressway Authority, the paper reported.

Dorworth had been accused of violating public meetings laws by speaking with former authority members about an effort to overthrow the authority’s director at the time, according to the paper.

State attorney spokesman Richard Wallsh said the authority would likely not appeal the ruling, the paper reported.

*Source: Orlando Sentinel*

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## Mental hospital investigation reveals secrecy

TALLAHASSEE – A yearlong investigation by two newspapers reveals how Florida law allows state-run mental hospitals to conceal records of employees’ abuse of patients, the Tampa Bay Times and Sarasota Herald-Tribune reported.

The two newspapers investigated injuries at six of Florida’s major mental hospitals, where officials at the Department of Children and Families repeatedly denied reporters access to information, according to the story. The reporters found cases where DCF sealed

details of patients’ deaths, classifying them as accidental, even when employees made mistakes or had acted negligently, the papers reported.

When reporters asked for names of employees accused of abuse, DCF cited Florida law, which protects the identities of individuals who report abuse, the victims and the accused employees.

Even when employees admitted abuse or mistakes and were subsequently fired, DCF can withhold the records, according to the

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## Hulk Hogan records to remain sealed

ST. PETERSBURG – A Florida judge denied a group of media outlets’ motion to make Hulk Hogan’s sex-tape trial records public, according to the Tampa Bay Times.

Terry Bollea, better known as Hulk Hogan, has filed a lawsuit against Gawker after the news website leaked a video of Bollea having sex with his friend’s then-wife, the paper reported.

Gawker filed a public records request for documents related to an FBI investigation, and the judge ordered them released, according to the paper. But the judge then sealed the records after they were put into public record in the civil suit, the paper reported.

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## Florida earns D- in study on transparency

WASHINGTON – While Florida continues to earn praise for its Government-in-the-Sunshine laws, the state only earned a D- grade in the

most recent study on transparency by the Center for Public Integrity.

Based on scores in 13 categories, Florida tied for 30th among the states in the 2015 State Integrity Investigation. The state received its lowest scores in the areas of electoral oversight, state budget processes and management of civil service employees, according to the study.

No state earned higher than a C in the study, but the highest score went to Alaska, while Michigan earned the lowest failing grade.

*Source: www.publicintegrity.org*

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papers.

DCF investigative files only become public record if officials decide the death is a result of abuse or neglect, the papers reported. DCF investigators have concluded that only four out of at least 55 deaths since 2009 have fallen under this category, according to the papers. However, the papers’ investigation revealed four additional cases where public police and autopsy records show a patient died due to employee neglect, the papers reported.

*Source: Tampa Bay Times, Sarasota Herald-Tribune*

Charles Tobin, a lawyer representing the media companies, said, “What’s going on in Hulk Hogan’s case certainly is not the norm when it comes to public transparency of the courts,” The Associated Press reported.

*Source: Tampa Bay Times, The Associated Press*

## Judicial Watch sues scientists over records

WASHINGTON – A watchdog group has filed a lawsuit against the Obama administration, seeking internal information related to a global warming study, The Washington Post reported.

The group, Judicial Watch, filed the Freedom of Information Act lawsuit in the U.S. District Court in Washington against the National Oceanic and Atmospheric Administration, after the agency failed to respond to a request for information regarding its methodology in a climate study, according to the

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paper.

Judicial Watch claims the requested records would show smaller rates of global warming, the paper reported. NOAA scientists, however, say the requested data is more unreliable than the data it used in the study, according to the paper.

NOAA says it has now handed over all the data and methodology used in the study to Judicial Watch, the paper reported. The lawsuit, however, is still pending.

*Source: The Washington Post, Judicial Watch, Inc. v. U.S. Dept. of Commerce, No. 1:15-cv-02088-CRC (Civil Docket)*

## Court reverses paper's gag order

WEST PALM BEACH– The 4th District Court of Appeal reversed a lower court's gag order, which mandated a Florida newspaper to remove transcripts of an inmate's jailhouse phone calls on its website.

Circuit Judge Jack Schramm Cox ruled The Palm Beach Post must block public access to phone conversations of convicted killer Frederick "Rock" Cobia, a jailhouse "snitch."

However, Judge Martha C. Warner, writing for the appellate court, rejected the trial court's justification for the retroactive gag order, which centered on Cobia's privacy rights. Such censorship

is presumptively unconstitutional in light of the First Amendment, she said.

"The trial court in this case failed to explain why Cobia's privacy rights were so compelling as to overcome the Post's First Amendment right to publish the transcripts," wrote Warner. Florida law establishes that inmates do not have privacy rights when talking on jailhouse phones, she added.

The Palm Beach Post has since reposted the transcripts of Cobia's phone calls onto its website.

*Source: Palm Beach Newspapers, LLC v. State of Florida, No. 4D15-4572, www.mypalmbeachpost.com*

## City seeks policy for petitioners at city-sponsored events

GAINESVILLE – The city of Gainesville seeks to develop a policy on how to handle petitioners at all city-sponsored events, following potential First Amendment violations at an arts festival, The Gainesville Sun reported.

When art festival director and city employee, Linda Piper, asked how petitioners would be handled at the festival, the Gainesville Police Department said they would be asked to stop or be removed unless they had purchased a space, the paper reported.

Emails and correspondence gathered through a public records request show the

city did not ask the city attorney's office whether the policy violated petitioners' First Amendment rights, according to the paper.

By the last day of the arts festival weekend, the city realized the policy was problematic and set up a space within the festival site for petitioners, the paper reported.

However, at least one petitioner who was escorted out during the event has launched complaints with the city, media, State Attorney Bill Cervone, and the ACLU, according to the paper.

*Source: The Gainesville Sun*

## Sheriff's office fails to maintain email records required by law

JACKSONVILLE – The Jacksonville Sheriff's Office admitted not having a system for saving all email records as required by Florida's Public Records Law, The Florida Times-Union reported.

Sheriff Mike Williams reportedly told the paper that the Sheriff's Office had no way of saving emails older than 90 days.

Williams said that a new system was put in place in November of last year, and the Sheriff's office will review its process and hire a new records manager, according

to the paper.

"I have confidence in my team to address the problem and fix it. I guarantee it," the paper quoted Williams as saying in a statement. "Transparency is one of the 'must do well' commitments and we will fix this."

The failure to maintain proper records came to light following an inquiry as to why the Sheriff's Office had not produced email records requested five months prior, the paper reported.

*Source: The Florida Times-Union*

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Sandra F. Chance, J.D., Exec. Director/Exec. Editor  
Linda Riedemann, Editor  
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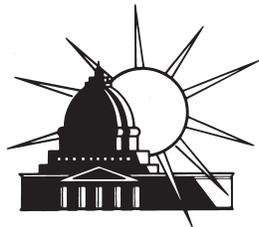
The Brechner Report is published 12 times a year under the auspices of the University of Florida Foundation. The Brechner Report is a joint effort of The Brechner Center for Freedom of Information, the University of Florida College of Journalism and Communications, the Florida Press Association, the Florida Association of Broadcasters, the Florida Society of Newspaper Editors and the Joseph L. Brechner Endowment.

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January 2016



UF UNIVERSITY of FLORIDA

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U.S. POSTAGE  
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Permit No. 94  
Gainesville, FL

## Death toll from violent cops is a guessing game

Unarmed people, mostly black men, shot by police. People, mostly black, dying in police custody. Over the past year, the consciousness of the American public has been seared with these stunning facts and shocking images. The deaths, and other instances of police violence that disproportionately target African-American communities, have fueled demands for greater transparency in reporting by police forces nationwide.

A major impediment to justice and accountability for police violence is the lack of comprehensive data on law enforcement-involved shootings and use-of-force incidents. Now, however, Attorney General Loretta Lynch has come out against a federal mandate on reporting deaths in police custody. I beg to differ: Police transparency should not be seen as a hindrance to responsible policing. Rather, it is critical for accountability and vital for public trust in our police forces.

It is shocking how little we know — from the federal level on down to the most local precinct — about how often these deaths and serious bodily injuries occur. We are left in the dark when

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By Patrice McDermott

it comes to official, verifiable figures on police-involved shootings and deaths in law enforcement custody, where they happen and how they are stratified along racial and other

demographic lines. The Wall Street Journal reported last year that according to a 2012 study by criminologist David Klinger, three sources of information about deaths caused by police — the FBI, the Centers for Disease Control and Prevention, and the Bureau of Justice Statistics — differ widely in any given year or state. The FBI, for example, captures data on justifiable homicides by law enforcement officers, but only when a civilian is a suspected felon or killed while committing a felony, and such reporting is voluntary.

How can it be, in this era of open data, that we know so little? Much of what we do know is thanks not to government records, but rather to old-fashioned reporting by a few dedicated journalists. Wall Street Journal reporters collected and analyzed the latest data from 105 of the country's largest police agencies and discovered that "more than 550 police killings (between 2007 and 2012) were missing from the national tally or, in a few dozen cases, not attributed to the agency involved." Reporters for The (London) Guardian and The Washington Post compiled data on differing aspects of law enforcement-involved violence, but they had to do so by poring over news accounts, police reports, and other records to try to capture a fuller picture on the issues.

An existing law, the Death in Custody Reporting Act, requires states that receive specific federal allocations under a key 1968 crime control act report detailed information every quarter to the attorney general "regarding the death of any person who is detained, arrested, en route to incarceration, or incarcerated in state or local facilities or a boot camp prison." The Bureau of Justice Statistics collects inmate death records from each of the nation's 50 state prison systems and about 2,800 local jail jurisdictions, and records of all deaths occurring during the process of arrest. That's great, except that the death-reporting law is not being fully implemented. Thus, a lack of information remains a systematic impediment to public trust in law enforcement institutions.

This year, Democratic Sens. Barbara Boxer of California and Cory Booker of New Jersey introduced a bill (with the potentially misleading acronym of the PRIDE Act) that would provide another hook to make compliance with reporting mandatory: Eligible states and Indian tribes could receive grants to combat the lack of resources — cited by Lynch as a key reason so many police departments don't report these statistics. Attached to the grants would be a requirement to report to the Justice Department all incidents involving a law enforcement officer and use of force that results in serious bodily injury or death, to include the gender, race, ethnicity and age of each individual who was shot, injured or killed.

Critically, the PRIDE Act calls for the attorney general, in coordination with the FBI director, to issue guidance on establishing standard data collection systems, including standard and consistent definitions, such as for "use of force." These are imperative to identifying how and where racial bias occurs in police-related use of force incidents — a crucial first step to dealing with the issue.

As we have repeatedly seen, however, passage of legislation is insufficient to bring about change in policy and practice.

The larger public-interest community must raise its voices on police violence and advocate for basic transparency. In light of Lynch's comments, it is particularly important that civil society factions — especially those groups that care about government openness, accountability and social justice — join forces to secure meaningful and enduring change.

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