
THE BRECHNER REPORT

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Report on Florida open government laws released

TALLAHASSEE – The Commission on Open Government Reform released its final report of recommendations for reforming Florida’s open government laws.

The nine-member commission was created by Gov. Charlie Crist in June 2007 to review, for the first time, the state’s public records and public meetings laws in their entirety.

Among the issues addressed in the

report was the number of redundant exemptions within the laws, challenges to access posed by new technology and the use of excessive fees under the general fee provision of the records law for public records requests.

ACCESS RECORDS

Among the recommendations, the commission called on the legislature to create universal exemptions that apply to all agencies and repeal redundant exemptions.

Also, the commission recommended the legislature create new legal standards for electronic records to facilitate public access and reduce the cost of redaction to such records. The commission also recommended all agencies create a process for public access to public record e-mail.

The report is available through the governor’s Web site at http://www.flgov.com/og_home.

Source: *Commission on Open Government Reform Final Report*

Access to nursing homes limited

TALLAHASSEE – The Florida Supreme Court ruled that the “Patients’ Right to Know About Adverse Medical Incidents” constitutional amendment does not apply to nursing homes.

The six participating justices unanimously ruled nursing homes are exempt from the amendment, adopted in 2004, that allows patients to check records of medical mistakes by nurses and doctors.

According to the Florida Supreme Court’s decision, “nursing homes do not fall within the definition of ‘health care facility’ or ‘health care provider’” in the patients’ right to know amendment.

Tony Marshall, senior vice president

of the Florida Health Care Association, which filed an amicus brief siding with the nursing home, said that the amendment applies to “patients” and people in nursing homes are considered “residents” under state law, according to *The Associated Press*.

The decision means the estate of deceased nursing home resident Marlene Gagnon won’t be able to obtain incident reports from the nursing home where she lived. Gagnon’s estate is suing Tandem Health Care Inc. the owners of the home where Gagnon lived.

Source: *The Associated Press and the Florida Supreme Court*

Pleas back on PACER in Miami

MIAMI – Chief Judge Federico Moreno of the Southern District of Florida ordered all plea agreements again be made available through the PACER system beginning in late February.

Moreno rescinded an April 2007 order making plea agreements accessible for viewing only at the courthouse.

The order followed a request from the Department of Justice to restrict electronic access to plea and cooperation agreements out of concern for witnesses’ safety. The concern stemmed from

Whosarat.com, a Web site containing information on cooperators in federal cases.

“The sense of the Court is that the public’s interest in access must prevail in this instance and that restricting access to all plea agreements is overly broad,” stated Moreno in the order, according to *The National Law Journal*.

Moreno noted in the order that individual plea deals can still be sealed by judges.

Source: *The National Law Journal*

Child internet law fight over

WASHINGTON – The U.S. Supreme Court won’t review a lower-court decision that struck down as unconstitutional the Child Online Protection Act.

The act was intended to protect children from objectionable and explicit materials online by barring Web sites

**FIRST
AMENDMENT** from making such content available to minors.

The 3rd U.S. Circuit Court of Appeals ruled the act violated the First Amendment because its purpose could be achieved through other means with less damage to free speech.

The Supreme Court’s decision ended the government’s last attempt to revive the Child Online Protection Act, which was passed in 1998. The act has been the subject of numerous legal battles and never took effect.

Despite the controversy over the law, it is unusual for the Court to kill a federal law without a final hearing, according to *The Associated Press*.

Source: *The Associated Press and The New York Times*

Sansom investigated over Sunshine violations

TALLAHASSEE – Ousted House Speaker Ray Sansom is being investigated by the state attorney, a grand jury and is also facing review from a House special investigator and the state Commission on Ethics.

The state attorney is investigating whether Northwest Florida State College trustees improperly held a meeting that Sansom helped arrange and both he and college president, Bob Richburg, attended.

The public college's board of trustees meeting may have violated Sunshine laws because it was only advertised in a newspaper 150 miles away one week before the meeting.

The meeting, booked under "Sansom dinner," was held at a members-only club and caterers were instructed not to post signs directing the public to the meeting place, according to the *St. Petersburg*

Times/Miami Herald Tallahassee Bureau.

Under pressure, the "minutes" of the meeting "suddenly emerged" ten months after the meeting, according to the *St. Petersburg Times/Miami Herald Tallahassee Bureau.*

In January, Attorney General Bill McCollum opened an inquiry into whether the meeting violated open meetings laws and requirements for keeping minutes of open meetings.

A grand jury in Tallahassee is also investigating whether an unadvertised \$110,000 job Sansom took at the college the same day he became speaker of the House was a reward for millions he funneled to the college.

Over the past two years Sansom, as top budget writer in the House, steered \$35 million to the college including \$6 million for an airport project.

Sansom resigned from the job at the college effective Jan. 31.

Planning documents and e-mails obtained through public records link Sansom, Richburg and developer Jay Odom to plans for building an airport facility with \$6 million in state money.

Public records requests for e-mail exchanges between Sansom and Richburg related to the trustee's meeting and Sansom's job at the college have also revealed that Sansom's e-mail is deleted every 30 days, according to *The Associated Press.*

A spokeswoman for Sansom's office said house members are allowed to decide whether to archive e-mails, according to *The Associated Press.*

Source: St. Petersburg Times, The Miami Herald, The Associated Press and The Tampa Tribune

Tampa Bay Downs fined

TAMPA – A federal judge ordered Tampa Bay Downs to pay \$90,000 in statutory damages to the American Society of Composers, Authors and Publishers for playing songs without a license.

The six songs were played three years ago at a Tampa Bay Downs

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Kids and Family Day event.

According to the *St. Petersburg Times*, federal court records show Tampa Bay Downs was warned repeatedly by the ASCAP about playing music without a license and did not stop until it got sued.

U.S. District Judge Virginia Hernandez Covington wrote in the ruling, "the court finds that there is a substantial likelihood that TBD will continue to infringe copyrighted works unless an injunction is issued," according to the *St. Petersburg Times.*

The judge prohibited Tampa Bay Downs from using any music licensed by ASCAP without permission.

Source: St. Petersburg Times

FREEDOM OF INFORMATION

Smithsonian adopts FOI policy

WASHINGTON – The Smithsonian Institution announced it will apply "a presumption of disclosure" when responding to records requests, according to *The Reporters Committee for Freedom of the Press.*

Although a federal court ruled in 1997 that The Smithsonian Institution is not subject to FOIA, the institution adopted the FOIA-like policy responding to pressure from lawmakers and open government activists.

Under the policy, requesters will also have an administrative appeal right similar to that allowed by FOIA, but will not be able to file suit if a request

is denied.

"It is an important first step in ensuring more openness and accountability, consistent with the time-honored principles of FOIA," said Sen. Patrick Leahy, according to *The Reporters Committee for Freedom of the Press.*

The policy also allows the profit-generating portions of the Smithsonian to protect documents containing trade secrets and commercial or financial information relating to the institution's revenue-generating activities.

Source: The Reporters Committee for Freedom of the Press

Cheney wins records battle

WASHINGTON – A federal judge ruled that former Vice President Dick Cheney and his office have broad discretion to determine what records to preserve from his time in office.

The judge rejected the Bush administration's position that Cheney has discretion to decide how to apply the Presidential Records Act to his office, but held that the former vice president had not unlawfully narrowed

the definition of what records must be preserved from his office under the act.

"This is a huge loophole in the Presidential Records Act and Congress needs to address it immediately," said Melanie Sloan, executive director of Citizens for Responsibility and Ethics in Washington, one of the plaintiffs in the case, according to *The Associated Press.*

Source: The Associated Press

Tech-savvy presidency

WASHINGTON – Relying on the tools that helped Barack Obama reach millions by e-mail and text message during the campaign, the Obama presidency promises to be the first digital presidency.

NEW TECHNOLOGY

For starters, President Obama revamped the weekly radio address to the nation, making video of the speech available on Whitehouse.gov and YouTube.com.

The new administration will use other new media and social networking sites, including Facebook, Web sites, such as MyBarackObama.com, and blogs to keep the public informed and rally support for the administration's agenda.

"There's no president who has been that directly connected to that many million Americans," said Joe Trippi, a Democratic strategist, according to *The Palm Beach Post*.

Source: *The Palm Beach Post-Cox News Service and The White House Web site*

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Brechner Center for Freedom of Information
3208 Weimer Hall, P.O. Box 118400
College of Journalism and Communications
University of Florida, Gainesville, FL 32611-8400
<http://www.brechner.org>
e-mail: brechnerreport@jou.ufl.edu

Sandra F. Chance, J.D., Exec. Director/Exec. Editor
Adrianna C. Rodriguez, Editor
Alana Kollfrath, Production Coordinator

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ACCESS RECORDS

Autopsy photo access restricted

ORLANDO – Orange County Circuit Judge Stan Strickland agreed to restrict access to three disks containing digital images from Caylee Anthony's autopsy in an effort to prevent those images from reaching the media.

Caylee's mother, Casey Anthony, is charged with killing the two-year-old.

Casey Anthony's defense team will be able to view the images through a

secure Web site and will also have to agree not to copy the images.

Prosecutors in the case had originally asked the judge to prohibit the images from leaving the Orlando area by mail, carrier service or the Internet, but Anthony's defense team argued such requirements would be burdensome to out-of-state forensic experts they have hired.

Source: *The Associated Press*

Records request sparks debate

LAKELAND – A Lakeland man's request for the records of those covered under the health insurance plans of each of the 67 school districts in Florida has prompted employee concern and the introduction of new legislation.

Joel Chandler won a court case forcing the Polk County school district to turn over the records in October. The personal information he is requesting from the school districts includes the names, addresses, ages and telephone numbers of everyone covered under the districts' health insurance plans and that of their spouses and dependents.

Chandler has said he is filing the requests to bring attention to Florida's public records law and is not planning to sell the information once he receives it,

according to the *Ocala Star Banner*.

In response, Sen. Paula Dockery, R-Lakeland, and Rep. Seth McKeel, R-Lakeland, have introduced a bill that would prohibit the release of information of children insured under health insurance plans through their parents who are current or former employees of state agencies. Senate President Pro Tem Mike Fasano, R-New Port Richey, has also introduced a bill that would make "any personal identifying information" of the health and benefit coverage of a public school employee, spouse and dependents confidential, according to the *St. Petersburg Times*.

Source: *Daytona Beach News-Journal, St. Petersburg Times and Ocala Star-Banner*

White House visitor logs open

WASHINGTON – U.S. District Court Chief Judge Royce Lamberth ruled White House visitors logs are subject to FOIA, contrary to arguments made by the Bush administration.

Lamberth also ruled that the Department of Homeland Security violated the Federal Records Act in regularly deleting visitor logs prior to June 2006 from its computer system and failing to retain records from another

computer system prior to October 2004.

Citizens for Responsibility and Ethics in Washington requested the records in 2006. After losing its initial argument that the logs were not subject to FOIA, the Bush administration refused to release the logs claiming that presidential communications are privileged.

Source: *The Reporters Committee for Freedom of the Press*

Man forced to cover T-shirt

NEW YORK – An airline passenger asked to cover the T-shirt he was wearing with Arabic script on it before boarding a JetBlue Airways flight has been awarded \$240,000.

Raed Jarrar, a U.S. resident, was told

to cover the shirt which had written on it in Arabic: "We will not be silent" before boarding an August 2006 flight from New York to Oakland, Ca.

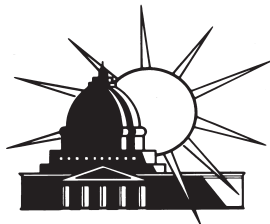
The American Civil Liberties Union announced that Jarrar received the payout from two U.S. Transportation Security Authority officials and JetBlue Airways.

Source: www.aclu.org

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University of Florida
Brechner Center for Freedom of Information
3208 Weimer Hall, P.O. Box 118400
Gainesville, FL 32611

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Jacksonville records fight leads to “small victory”

In April 1990, Jacksonville officials and representatives of the Jacksonville Jaguars promised the city an NFL-quality stadium for between \$20 million and \$60 million. The eventual cost of renovating the old Gator Bowl reached \$144 million.

Taxpayers had reason to wonder how, and how wisely, their hard-earned dollars were spent — not least because the team decided to award the lucrative project, without bids, to The Haskell Company, a firm owned by a Jaguars partner.

The public also had a right to see documentation of the expenditures under Florida’s public records law. The lease agreement between the city and the Jaguars even acknowledged this right, guaranteeing “reasonable access to all renovation project information.”

Despite that guarantee, when *Folio Weekly* requested a copy of the contract between the Jaguars and the project contractor in March 2004, the city refused.

The Back Page

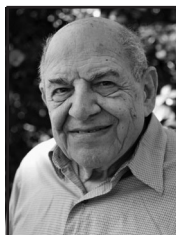
By Marvin Edwards

saying that since the Jaguars and The Haskell Company were both private entities, the agreement between them was also private.

Amazingly, city attorneys backed up this opinion. In an August 2004 letter to *Folio Weekly*, Deputy General Counsel Karen Chastain wrote, “we do not believe this specific document is in the possession of the City. Please be advised that we do not believe the city is required to have this particular document so that it would be a public record. Because we do not physically have it, and because it is not a public record, we are not able to provide this specific item to you to satisfy your request.”

The argument was frail, and controverted state law. That’s because when the city anoints a private company to function in its stead — as Jacksonville did when it deputized the Jaguars to manage the renovation — that company becomes subject to state public records laws.

As it turned out, the city did have a copy of the renovation



Marvin Edwards

contract. After *Folio Weekly* sued to review documents in the city’s possession, the contract between the Jaguars and the contractor was one of the first documents we found. A similar standoff occurred when we asked to see detailed expense reports for money spent by the Jacksonville Super Bowl Host Committee, the group that organized and financed events surrounding the 2005 Super Bowl in Jacksonville.

The city pledged some \$3 million to the event, and ultimately spent \$11 million. But despite requests from several local papers and auditors to the Jacksonville

City Council for a detailed financial accounting, city officials and the committee refused to provide receipts, contracts or other documentation. Although the committee was subsidized with city funds, staffed with several city employees and tasked with providing a public function on behalf of the city both the city and the committee claimed the agency’s records were not public.

The city declined to offer a legal justification for this position, but its claim of being exempt ignored a salient fact: the committee’s agreement with the city specifically stated that it would have to comply with public records laws. The agreement also said that after the Super Bowl, all records would be turned over to the city.

In the end, it took three years and more than \$9,000 in legal fees before the city would even acknowledge the documents existed.

Our quest ended with a small victory.

Although the city had said all along that it didn’t have in its possession any documents relating to the Gator Bowl renovation, it ultimately turned over 25 large boxes’ worth of information. The city also repaid \$5,000 of our legal fees. But the document trail is incomplete at best.

The battle highlighted the city’s contempt for public records laws, and its utter lack of accountability for expenditures related to the city’s NFL football interests. To date, some \$185 million in taxpayer money has been spent wooing the Jacksonville Jaguars and luring the Super Bowl to town. How that money was spent largely remains a mystery. And that is very clearly by design.

Marvin Edwards, 87, is a contributing writer at *Folio Weekly*. Photo by Walter Coker/ *Folio Weekly*