
THE BRECHNER REPORT

Volume 34, Number 7 ■ 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

July 2010

Florida Supreme Court denies NCAA review

TALLAHASSEE – The Florida Supreme Court has refused to hear the National Collegiate Athletic Association's (NCAA) appeal of its public records case.

The 1st DCA had ruled that documents on a password-protected website related to a cheating scandal at Florida State University were in fact public records.

The documents were viewed by attorneys for FSU. The NCAA argued it

ACCESS RECORDS

was a private entity and that viewing of the documents by FSU attorneys did not make the records public.

However, the 1st DCA held that viewing the records amounted to "receipt" of them under Florida's Public

Records Law.

The Florida Supreme Court exercised its discretion to decline review of the case.

Several news organizations sued for access to the documents last summer. FSU and Florida Attorney General Bill McCollum sided with the media in demanding public disclosure of the documents.

The NCAA sanctions case connected to the records resulted in disciplinary action against FSU including the loss of 12 football victories.

Source: Tallahassee Democrat, www.floridasupremecourt.org

Judge grants access to depositions in Ponzi case

BROWARD COUNTY – A federal judge has granted the press access to depositions in a bankruptcy case involving a \$1.2 billion Ponzi scheme.

The Daily Business Review filed a motion to intervene in the case after Judge Raymond B. Ray of the U.S. Bankruptcy Court for the Southern District of Florida closed the deposition of a former partner in the law firm Rothstein Rosenfeldt Adler. The firm's chairman, Scott Rothstein, is accused of orchestrating the Ponzi scheme.

Steve Lippman wanted the depositions of himself and his wife closed, concerned that details of their personal life or attorney-client relationships might be

revealed. A bankruptcy trustee is suing Lippman for \$3.1 million in allegedly fraudulent transfers of property, according to the *Review*.

Judge Ray held that Lippman and his wife did not meet their burden of proving a particular need for protection. Judge Ray's opinion also noted "the need for transparency in this bankruptcy case following the collapse of the largest Ponzi scheme in the history of South Florida."

The order granting the *Review*'s motion to intervene permits the public and the press to attend the deposition. "Properly credentialed" reporters are

allowed to attend but may not record the deposition.

The press and the public are also prohibited from talking or doing anything "that would cause the slightest disruption" of the proceeding.

COURTS

Judge Ray also ordered a copy of the deposition transcript be posted online.

Rothstein faces up to 100 years in prison for his scheme involving the sale of legal settlements to wealthy investors, according to *The Miami Herald*.

Source: The Daily Business Review, In re: Rothstein Rosenfeldt Adler, P.A., The Miami Herald

Gag order in DuPont suit reversed on appeal

BROWARD COUNTY – The 4th DCA has overturned a trial judge's gag order in a lawsuit against DuPont by shrimp farmers from Ecuador.

Broward Circuit Judge Charles M. Greene in December issued a gag order, preventing all parties from talking about the lawsuit.

The plaintiffs in the suit alleged that DuPont, by way of a Sept. 3, 2009 opinion piece in the *South Florida Sun-Sentinel* (Fort Lauderdale) submitted by the Florida Justice Reform Institute,

was attempting to influence potential jurors.

DuPont appealed, and the 4th DCA struck down the gag order because

it was unsupported by any findings that it was necessary for a fair trial; there was no notice or proper evidentiary hearing on the issue; and because the order didn't have limits on the time or application.

The lawsuit is more than a decade

old and centers on claims by the shrimp farmers that runoff containing the fungicide Benlate entered waterways and killed shellfish, according to *The Daily Business Review*. DuPont later withdrew Benlate from the market but denies it was harmful.

Retrials are scheduled after multimillion-dollar verdicts in favor of the shrimp farmers were overturned on appeal.

Source: The Daily Business Review, www.4dca.org

FIRST AMENDMENT

ACCESS MEETINGS

Six Florida agencies receive transparency awards

OCALA – The Sunshine Review has bestowed “Sunny Awards” on 41 government websites, four of which were from Florida.

The Sunshine Review analyzed 5,000 websites using a 10-point transparency checklist.

The sites were graded according

to the information available online related to budgets, meetings, elected and administrative officials, permits and zoning, audits, contracts, lobbying, public records, and taxes.

In Florida, Duval County, Hillsborough County Public Schools, Seminole County Public Schools and the

St. Johns County School District all earned perfect scores.

Marion County Public Schools and the Palm Beach County School District also garnered Sunny Awards, each receiving an “A” grade.

Source: sunshinereview.org, Ocala Star-Banner

Police chief admits to tipping off prosecutors

CORAL SPRINGS – The person who tipped off prosecutors about a meeting between two Coral Springs city commissioners and police union representatives was the police chief, according to *The Miami Herald*. Police Chief Duncan Foster testified in a deposition that he told prosecutors about a March meeting between commissioners

Tom Powers and Vincent Boccard and police union reps.

Powers and Boccard now face charges of violating the Sunshine Law. They were also removed from office by Gov. Charlie Crist and have since been replaced.

But an attorney for Powers alleges that Chief Foster was retaliating against the

commissioners for raising questions about Foster’s job performance and rejecting a pay raise for police, according to *The Herald*.

Foster stated in the deposition that while he did have professional disagreements with Boccard and Powers, it was his job to refer evidence of possible criminal wrongdoing to the proper authorities.

Source: The Miami Herald

ACCESS RECORDS CONTINUED

Prisoner advocacy group wins public records suit

WEST PALM BEACH – *Prison Legal News* has prevailed in a Public Records Law suit against private prison company GEO Group.

Prison Legal News filed suit in 2005, seeking records related to contractual

violations and settlements or verdicts against the Boca Raton-based prison services provider.

Just prior to a summary judgment hearing, GEO produced records. It also agreed to pay \$40,000 in attorney’s fees,

according to Frank Kreidler, attorney for *Prison Legal News*.

GEO Group operates four prisons in Florida, according to its website.

Source: Prison Legal News v. The GEO Group, Inc.

PRESS FREEDOM

New federal law promotes press freedom internationally

WASHINGTON D.C. – A new law aimed at promoting press freedom worldwide has been signed into law by President Obama.

The Daniel Pearl Freedom of the Press Act honors Pearl, a *Wall Street Journal* reporter who was killed in Pakistan eight years ago.

The legislation calls on the State Department to identify countries that subject journalists to censorship, physical attacks and imprisonment. The department is also charged with determining if foreign governments are condoning mistreatment of journalists.

An annual review of how foreign governments respond to those who persecute journalists will also be

performed by the State Department.

“Without this kind of attention, countries and governments feel they can operate against the press with impunity, and we want to send a message that they can’t,” Obama said upon signing the law.

Eleven journalists have died so far this year and 164 imprisoned, according Reporters Without Borders. The group’s director, Clothilde Le Coz, said it was difficult to say whether the new law will bring change.

Obama refused to answer any questions from reporters who covered the signing.

Source: Reporters Committee for Freedom of the Press

Newspapers challenge ban

MIAMI – The Pentagon’s decision to bar four reporters from covering proceedings at Guantanamo Bay has prompted three news organizations to challenge the ban. *The Miami Herald*, *Toronto Star* and Canwest Newspapers

have asked the Pentagon to reconsider its ban, which was prompted when the reporters published the name of a witness who the presiding judge ordered be referred to only as “Interrogator No. 1.”

However, the witness’ name had already been made public on several occasions. The news organizations want the Pentagon to rescind its order.

The hearing involves Canadian detainee Omar Khadr.

Source: Reporters Committee for Freedom of the Press

2010 LEGISLATIVE REVIEW

TALLAHASSEE – The following is a summary of bills pertaining to public records and open meetings introduced during the 2010 legislative session. Chief sponsors of the bills are indicated in parentheses at the end of the summaries. Copies of the legislation in full are available at the Florida Legislature's website (www.leg.state.fl.us).

*SB=Senate Bill; HB=House Bill;
CS=Committee Substitute.*

The following six bills create new exemptions to the state Public Records and Open Meetings laws.

CS/SB 312 Home Addresses –

Public Defenders: Creates an exemption to the Public Records Law for home addresses, telephone numbers and photos of current or former public defenders. The exemption also applies to criminal conflict and civil regional counsel. Home addresses, phone numbers and workplaces of spouses and children are also exempted, as are names and locations of schools or daycares attended by their children. (Jones, R-Seminole). Signed by Gov. Crist June 1.

CS/HB 393 Public Transit Providers:

Creates an exemption to the Public Records Law for personal identifying information held by a public transit provider for the purposes of prepaid fares. (Bovo, R-Hialeah). Signed by Gov. Crist June 3.

CS/HB 551 County Conduct

Complaints: Expands the exemption for complaints and records relating to investigations by the Ethics Commission to include records held by counties and cities with local investigatory processes. This expansion of Section 112.324, Fla. Stat., applies until a probable cause determination is made, the complaint is dismissed or the accused person requests disclosure. (Eisnaugle, R-Orlando). Signed by Gov. Crist May 27.

CS/HB 1059 DFS – Examination

Techniques & Procedures: Creates an exemption to the Public Records Law for information revealing examination techniques or procedures utilized by the Office of Financial Regulation, defined as "methods, processes, and guidelines used to evaluate regulatory compliance and to collect and analyze data, records, and

testimony for the purpose of documenting" legal or rule violations. (Domino, R-Juno Beach). Signed by Gov. Crist May 11.

HB 7017 Credit Histories and

Credit Scores: Exempts credit histories and scores of mortgage broker licensees contained in records of the Office of Financial Regulation. (Workman, R-Melbourne). Signed by Gov. Crist May 28.

HB 7079 Voter Registration Records:

Renews exemption for the Social Security number, driver's license number, and Florida identification number of a voter registration applicant or a voter. Prohibits copying voter registration applications and signatures. Expanded to exempt declinations to register, information related to where voter registered or update information. Also creates an exemption for names, addresses and phone numbers of people who reasonably believe they are being stalked and whose names are held by the Florida Attorney General's Office. (H. Governmental Affairs Policy Committee). Signed by Gov. Crist May 26.

The following 17 exemptions were reenacted in 2010 under the Open Government Sunset Review Act (OGSR), which requires review of exemptions every five years; laws not reenacted during the fifth year are repealed.

SB 1678 Moffitt Cancer Center

& Research Institute: Exemption for proprietary confidential business information relating to methods of manufacture or production, potential trade secrets, potentially patentable material or proprietary information received, generated, ascertained or discovered during the course of research by the Center. (S. Higher Education Committee). Signed by Gov. Crist June 3.

HB 7079 Voter Registration Records:
(see summary above).

HB 7085 Commission on Ethics and

Public Trust: Exemption for complaints and records relating to preliminary investigation of the Commission on Ethics or Commission on Ethics and Public Trust established by a municipality. (H. Governmental Affairs Policy Committee). Signed by Gov. Crist May 26.

HB7087 Home Addresses –

Guardians ad Litem: Exemption for addresses, phone numbers, places of employment and photos of current or former guardians ad litem; also applies to information about children and spouses under certain conditions. (H. Governmental Affairs Policy Committee). Signed by Gov. Crist May 11.

HB 7089 Florida Self-Insurers

Guaranty Association: Exemption for claims files of the Florida Self-Insurer Guaranty Association, stipulating that the records become public upon termination of all litigation and settlement of all claims arising out of the same incident. Exempts those portions of association board meetings during which exempt claims files are discussed, requiring that the closed portions be recorded and transcribed. Finally, exempts the minutes of all closed meetings until settlement of the claim and termination of all litigation. (H. Governmental Affairs Policy Committee). Signed by Gov. Crist May 11.

HB 7091 Insurance Claim Data:

Exemption for Department of Revenue information obtained under insurance claim data exchange system where insurer voluntarily provides information about non-custodial parents with a claim against insurer who also owe child support. Information remains exempt until the department determines if a match exists. (H. Governmental Affairs Policy Committee). Signed by Gov. Crist May 11.

HB 7093 Domestic Security

Oversight Council: Exemption for portions of meetings of the Domestic Security Oversight Council at which active criminal investigative or intelligence information is heard or discussed if the council chair announces at a public meeting the need to discuss such information and declares the specific need to close the meeting in writing. Stipulates that the entire closed session must be recorded and no portions may be off the record and limits who may attend the closed session. Exemption for audio or video recordings and any minutes or notes generated during closed meetings, until the criminal investigation is no longer active or the security system plan is no longer in use. (H. Governmental Affairs Policy Committee). Signed by Gov. Crist May 11.

LEGISLATION CONTINUED

HB 7111 Information Held by Guardians ad Litem

HB 7111 Information Held by Guardians ad Litem: Exemption for all information relating to the best interest of the child held by the guardian ad litem. (H. Governmental Affairs Policy Committee). Signed by Gov. Crist May 11.

HB 7113 Child Abuse Death Review Committee

HB 7113 Child Abuse Death Review Committee: Exemption for information identifying a deceased child's surviving siblings, family members or others living in the home of the deceased, in records held by the State Child Abuse Death Review Committee or local committees. Provides a penalty for the knowing or willful disclosure of exempt information. Exempts committee meetings where identifying information is discussed; requires recordings of closed meetings and exempts the recordings. (H. Governmental Affairs Policy Committee). Signed by Gov. Crist May 7.

HB 7115 Parental Notification

Waiver Information: Exemption for information in records held by a court that could identify a minor seeking a waiver of parental notification of abortion requirements. (H. Governmental Affairs Policy Committee). Signed by Gov. Crist May 7.

HB 7117 Meetings – Funeral, Cemetery & Consumer Services Board

HB 7117 Meetings – Funeral, Cemetery & Consumer Services Board: Exemption for records and meetings of the Funeral, Cemetery and Consumer Services Board. All closed meetings must be recorded; recordings are exempt from disclosure. (H. Governmental Affairs Policy Committee). Signed by Gov. Crist May 11.

HB 7119 Hurricane Loss Model

HB 7119 Hurricane Loss Model: Exemption for trade secrets used in design and construction of hurricane loss model. Also exempts portions of meetings where trade secrets are discussed. Recording of a closed meeting must be made but is exempt from the Public Records Law. (H. Governmental Affairs Policy Committee). Signed by Gov. Crist May 15.

HB 7121 Hurricane Loss – Associated Exposure Data

Associated Exposure Data: Exemption for "reports of hurricane loss data and associated exposure data" specific to a particular insurance company reported to the Office of Insurance Regulation or a state university for the purpose of developing a hurricane loss projection

model. Trade secrets and portions of meetings at which trade secrets are discussed are also exempt. Requires Florida International University (responsible for public hurricane loss model) to publish report summarizing loss and associated exposure data collected from residential property insurers. (H. Governmental Affairs Policy Committee). Signed by Gov. Crist May 27.

HB 7123 Addresses – Domestic Violence Victims

HB 7123 Addresses – Domestic Violence Victims: Exemption for addresses and phone numbers of domestic violence victims participating in the Attorney General's Address Confidentiality Program. Same information is also exempt when held by Division of Elections or county supervisor of elections. (H. Governmental Affairs Policy Committee). Signed by Gov. Crist May 7.

HB 7165 Domestic Violence Fatality Review Team

Fatality Review Team: Exemption for information in records created by the team that would identify a domestic violence victim or children; also exempts portions of team meetings where exempt information is discussed. (H. Governmental Affairs Policy Committee). Signed by Gov. Crist May 7.

HB 7167 Commission for Independent Education

Independent Education: Exemption for all investigatory records held by the Independent Education Commission in conjunction with investigations into complaints, including minutes and findings of exempt probable cause panel meetings convened in conjunction with such investigations. Stipulates that such information will be exempt for no more than 10 days after the panel makes a determination regarding probable cause. Also creates an exemption for portions of meetings of the probable cause panel at which exempt records are discussed. Now requires closed meetings be required and subject to disclosure 10 days after probable cause determination is made. (H. Governmental Affairs Policy Committee). Signed by Gov. Crist May 11.

HB 7193 Voluntary Prekindergarten Education Program

Voluntary Prekindergarten Education Program: Exemption for individual records of children enrolled in the Voluntary Prekindergarten Education Program. (H. Governmental Affairs Policy Committee). Signed by Gov. Crist May 7.

The following bills were introduced in the 2010 session but were not passed.

SB 138 and CS/HB 405, Exemption/Litigation Meetings

CS/SB 142 and HB 659, Meetings – Water Management Districts

SB 154 and HB 359, Workplace Safety

HJR 241 and SJR 440, Constitutional Amendment – Legislative Process

HB 279 and SB 586, Data Destruction

CS/SB 310, Exemption/Trade Secrets

SB 376, HB 1381 and HB 1511, Public Notice

HB 529 and CS/SB 656, Home Addresses – Long-Term Care Ombudsmen

HB 539 and CS/SB 972, Exemption/Dental Workforce Surveys

CS/HB 541 and SB 1214, Sealing & Expunging Criminal History Records

HB 647 and SB 1506, Commercial Use/Crime Scene Photos & Videos

HB 649 and SB 1496, Exemption/Crime Scene Photos & Videos

SB 686, Shell Bill/Public Records and Meetings

SB 692, Shell Bill/Public Records

SB 726, Shell Bill/Public Records

HB 733 and SB 1942, Public Participation – Comprehensive Plan Amendments

HB 745 and CS/CS/SB 1142, Exemption/Meetings – Invitations to Bid

SB 746, Shell Bill/Public Records and Meetings

CS/HB 867 and SB 1838, Exemption/DFS – Title Insurance, Insurers, & Agents

HB 1099 and SB 2122, Exemption/Home Addresses – Foster Parents

HB 1211 and CS/CS/SB 1598, Sunshine in Government Act

SB 1252, Shell/Governmental Effectiveness & Efficiency

SB 1268, Shell/Governmental Effectiveness & Efficiency

CS/SB 1282, Exemption/Names – Spouses & Children

CS/SB 1296, Exemption/Fraud Strike Force

HB 1313 and CS/SB 1340, Exemption/Publicly-Owned Performing Arts Centers

SB 1362, Exemption/Juvenile Blood Test Results

HB 1423 and SB 2494, Exemption/Ethics Commission

CS/HB 1433 and SB 2628, Exemption/Incapacity Petitions

CS/HB 1435 and SB 2624,

continued on p. 5

ATTORNEY GENERAL OPINIONS

Informal opinion: Photo tickets are public records

TALLAHASSEE – Traffic tickets issued after drivers are caught on camera are not confidential, according to an informal opinion of the Florida Attorney General's Office.

The opinion was issued at the request of the attorney for Juno Beach after *The Palm Beach Post*'s request for records related to the photo tickets. More than

8,600 notices of infraction were issued by a third-party vendor and were the subject of the records question.

The notices were created using information from motor vehicle records. Town Attorney Leonard G. Rubin asked if the Florida law (and the federal Driver's Privacy Protection Act of 1994) that made motor vehicle records

confidential applied to the notices.

The Attorney General's Office concluded that "once personal information contained in a motor vehicle record is received from the department [of motor vehicles] and used in the creation of new records," the confidentiality protections of state and federal law no longer apply.

Source: myfloridalegal.com

Agency's call whether misdirected letter is public

TALLAHASSEE – A settlement letter sent by accident to a state agency is only a public record if the agency determines it was received pursuant to official business, according to an informal opinion from the Florida Attorney General's Office.

The state Board of Professional Engineers requested advice from the AGO after an attorney for an engineer involved in a business dispute faxed a settlement letter to the Board's

executive director. The letter itself was addressed to the other attorney in the business dispute, whose name was similar to the Board's director, Carrie Flynn.

The engineer later discovered that his attorney's letter regarding his settlement was in the board's file and requested that it be removed and destroyed.

The Attorney General's Office issued an informal opinion, stating that whether a document received by an agency is a public record turns on the statutory

definition of a public record. The Public Records Law covers documents "made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

The AGO concluded that the board would need to determine whether the settlement letter was received in connection with official business, considering whether the letter relates "to a past, existing, or potential investigation by the board."

Source: myfloridalegal.com

Property value magistrates subject to Sunshine

TALLAHASSEE – Special magistrates appointed to take testimony and make recommendations regarding tax exemptions and property values are subject to the Open Meetings Law, according to an opinion of the Florida Attorney General (AGO 2010-15).

The Executive Director of the Florida Department of Revenue, Lisa Escheverri, requested the opinion. Value adjustment boards (VABs) are quasi-judicial bodies that hear appeals from taxpayers

regarding denial of tax exemptions and valuation of property for tax purposes. The board holds hearings where taxpayers and the property appraiser can testify and present evidence related to the tax assessment.

In counties with more than 75,000 people, VABs must appoint special magistrates to hold the hearings and make recommendations. The VAB can then take action based on the recommendations without holding any

more hearings.

Attorney General Bill McCollum concluded that while the Open Meetings Law "would not ordinarily apply to an individual member of a public board or commission or to public officials who are not board or commission members," the law does apply when a board has delegated authority. A special magistrate "stands in the shoes of the VAB" and is subject to the Sunshine Law, the opinion stated.

Source: myfloridalegal.com

2010 LEGISLATIVE REVIEW CONTINUED

Exemption/Incapacity Records

SB 1452 Public Record Mediation Program

HB 1497 and SB 2544, Expungement/Non-Judicial Arrest Record

HB 1513 and SB 1994, Clerks of Court

HB 1617, DOH/Legislative Budget Requests

CS/SB 2070 Exemption/OFR – Consumer Investigations

CS/SB 2072 Exemption/OFR – Debtor Investigations

SB 2096 Shell/Public Record

Exemptions

SB 2158 Shell/Public Records and Public Meetings

SB 2704, Right to Vote by Secret Ballot

SB 2732, Exemption/Florida Vocational College

SB 2740, Exemption/Instructional Assessments

HB 7211, Exemption/Office of Regulatory Staff

HB 7239, Exemption/DOH – Statements of Reference

Source: Florida First Amendment Foundation: www.floridafaf.org, www.flsenate.gov and www.myfloridahouse.gov

THE BRECHNER REPORT

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
Christina M. Locke, J.D., Editor
Alana Kolfrath, Production Coordinator

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.

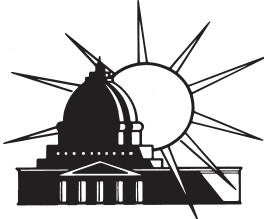
THE BRECHNER REPORT

University of Florida

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

Non-Profit Organization
U.S. POSTAGE
PAID
Permit No. 94
Gainesville, FL

July 2010



2010 Legislature misses opportunities for reform

Friends and advocates of open government began the year cautiously optimistic that the Florida Legislature would enact significant open government reforms – the first in nearly 15 years – in the 2010 legislative session. A few bills in particular generated hope for reform. One would have opened up the legislative process to more sunshine. The other would have enacted reforms to the Sunshine and Public Records laws recommended by the Commission on Open Government. Neither passed.

House Joint Resolution 241 by Rep. Keith Fitzgerald (D-Sarasota) and its companion, SJR 440 by Sen. Dan Gelber (D-Miami Beach), would have prohibited members of a legislative conference committee from discussing issues before that committee with other conferees except at a noticed, open meeting. Allowing public oversight of the conference

committee process would have been a significant reform resulting in more sunshine and accountability on decisions

made during the last few weeks

of session, when House and Senate conferees meet to hammer out differences in companion bills. Unfortunately, neither bill received a hearing during the legislative session and, as a result, both bills died without any discussion or debate on the merits.

The House and Senate bills based on recommendations of the Governor's Commission on Open Government also generated hope for reform. Among other changes, the bills would have: merged the Sunshine Law and Public Records Act into one chapter; made penalties consistent for violations of records and meetings laws; and prohibited charging fees for redaction of information that is not a public record. The Senate bill (SB 1598 by Sen. Paula Dockery (R-Lakeland)) was heard in three Senate committees, passing out of each unanimously. HB 1211 (Rep. Clay Ford (R-Pensacola)), however, didn't receive a hearing and died in its first committee of reference.

The 2010 Legislature also enacted six new exemptions, including the expansion of a few existing exemptions to protect more records. Over the past decade, the Legislature has enacted an average of ten new exemptions each session, and passage of a mere six new exemptions is an improvement.

At least two of the new exemptions are cause for concern. The CS/SB 312 by Sen. Dennis Jones (R-Seminole) creates

a public record exemption for the home addresses, telephone numbers, and photographs of current and former public defenders and criminal conflict and civil regional counsel, as well as certain information about their spouses and children. This information will now be protected when held by an agency even though it could still be available in telephone books or on the internet. Creating an exemption from the constitutional right of access for information that is publicly available elsewhere is constitutionally flawed, and could very well be misleading for the individuals intended to be protected by the exemption.

Of significant concern is HB 7079 by the House Governmental Affairs Policy Committee, which originally simply reenacted an exemption for information concerning voters and voter registration records, with some minor modification. The bill was amended in the final days of session to create an exemption for the names, addresses and telephone numbers of persons who *reasonably believe* they are the victims of a stalker which are held by the Attorney General under a program designed to protect the location of domestic violence victims. Interestingly, a person who believes he or she is being stalked enjoys complete anonymity under the exemption, whereas only information relating to where a domestic violence victim lives or works is protected. Current law allows a stalking victim to protect locating information in all public records if the victim makes a written request and some evidence, such as a police report, that the crime actually occurred. The legislation also triggers constitutional questions – adding stalking victims to an exemption for records related to voters and voter registration could violate the single subject requirement of the Florida Constitution.

In addition to the new exemptions that passed, 17 exemptions that were subject to Open Government Sunset Review were reenacted, including HB 7079 discussed above.

All in all, the 2010 legislative session was mixed. The Legislature failed to enact reform legislation designed to improve open government in Florida, but only passed a limited number of new exemptions from the constitutional right of access to public records and meetings. Hopefully, some of the good bills that didn't make it through this year will be revived in the 2011 legislative session.

Jim Rhea is Director of the First Amendment Foundation.

The Back Page

By Jim Rhea