
THE BRECHNER REPORT

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1st Judicial Circuit amends court access rules

TALLAHASSEE – The 1st Judicial Circuit amended its courtroom access rules for the public and press in high-profile cases.

Chief Judge Terry Terrell signed the administrative order, which will allow a trial judge “with the concurrence of the chief judge” to declare a proceeding to be high profile or of special interest.

Once a case has been deemed “high profile,” court administrators for the circuit are called upon to serve as public information officers for the

court, according to the order. Media representatives should also notify court administrators 24 hours in advance of their intent to cover the high-profile proceeding, the order stated.

Only one television camera, one still photographer and one audio system for radio broadcast will be allowed in the courtroom for the high profile case at any given time, according to the order.

A media committee will also be set up to designate which reporters and photographers will be granted courtroom access, according to the

order. Members of the general public requesting courtroom access will be required to obtain passes, to be distributed on a first-come, first-served basis.

“The idea a court administrator can declare this or that case of great interest and all of a sudden limit the public’s ability to go into a courtroom, that’s really an offensive issue,” said Talbot “Sandy” D’Alemberte, who argued Florida’s first cameras in the courtroom case in 1977-78.

Source: Northwest Florida Daily News

COURTS

5th Amendment protects hard drives, court rules

ATLANTA – The 11th U.S. Circuit Court of Appeals in Atlanta ruled that a Florida man under investigation in a child pornography case is not required to unlock his computer hard drives for the federal government.

The ruling appears to be the first by a federal appellate court to find that the Fifth Amendment, which guarantees a privilege against self-incrimination, protects a person from being forced to hand over encryption codes and passwords to the government in a criminal investigation, *The Wall Street Journal* reported.

The man, who is being referred to as John Doe in court documents, was served with a subpoena to appear before a grand jury to decrypt and produce the contents of two laptop computers and five external hard drives, which were seized from his hotel room.

When Doe refused, the Department of Justice obtained a court order granting him limited immunity and requiring him to unlock the contents of the drives.

He once again refused and was held

in contempt of court. Doe appealed the contempt finding to the 11th Circuit.

Writing for a three-judge panel, Judge Gerald Bard Tjoflat ruled that Doe was entitled to Fifth Amendment protection because Doe’s decryption and production of the contents of the drives would be testimonial, not merely a physical act. Further, the government could not provide enough evidence to prove that incriminating files even existed on the hard drives.

Source: The Wall Street Journal

PRIVACY

Courts redact personal information in court filings

PALM BEACH COUNTY – Courts in Palm Beach County got their first test in adapting to a new law requiring courts to keep private personal information out of court records.

As of Jan. 1, the Florida judiciary and clerks of the circuit courts are required to remove Social Security numbers, bank, debit and credit card information from all public court records.

In an effort to provide the public with electronic access to court records while minimizing the amount of unnecessary personal information included in those

records, the Florida Supreme Court adopted new rules in October 2011. The new rules require the removal of all personal information from court filings. Previously, court clerks were only required to remove sensitive personal information when they received a request for those records, according to *The Palm Beach Post*.

To comply with the mandate, the Palm Beach County clerk’s office spent \$3.5 million on an electronic redaction software program. It also installed 80 new self-service computer terminals.

The terminals provide greater access to records relating to criminal, civil and family court cases filed before 2008, although access to cases filed prior to 2008 are still only available by waiting in line. Because the mandate is unfunded, meaning lawmakers are not offering any additional resources to ensure compliance, County Clerk and Comptroller Sharon Bock estimated that about half of Florida’s counties have been unable to afford the redaction software her office uses, the *Post* reported.

Source: The Palm Beach Post

9th Circuit protects photojournalist's rights

SAN FRANCISCO – The First Amendment must be weighed in any official restriction on the media, the 9th U.S. Circuit Court of Appeals ruled.

A three-judge panel ordered the federal district court to reconsider its decision that a photographer's First Amendment rights were not violated when she was prohibited from photographing

a roundup of wild horses on federal land in Nevada, the Reporters

Committee for Freedom of the Press reported.

Photojournalist Laura Leigh brought suit, claiming that viewing restrictions set by the Bureau of Land Management

(BLM) on horse roundups violated her First Amendment right to observe government activities. Leigh filed an injunction to require BLM to provide her with unrestricted access to the horse roundups, where there had been allegations of animal mistreatment.

The 9th Circuit in San Francisco held that the district court had incorrectly ruled that Leigh's First Amendment rights were not violated because she was not denied access to viewing the horse roundups altogether.

The appellate court remanded the case back to the district court to determine "whether the public has a right of access to horse gathers by considering whether

horse gathers have historically been open to the general public and whether public access plays a positive role in the functioning of the gathers. Second, if the district court determines that a right of access exists in this case, it must determine whether the BLM has overcome that right by demonstrating an overriding interest that the viewing restrictions are essential to preserve higher values and are narrowly tailored to serve those interests."

The court also found that the issue of Leigh's right to witness BLM's wild horse gather was not moot because her request applied to all future horse gathers, according to the Reporters Committee.

Source: RCFP.org, Leigh v. Salazar

**FIRST
AMENDMENT**

**ACCESS
RECORDS**

Nonprofit group sues Palm Beach tax collector

PALM BEACH COUNTY – A nonprofit government watchdog group has filed suit against tax collector Anne Gannon, alleging that her office violated the Public Records Law by refusing to release a copy of a settlement agreement.

A representative of the Sarasota-based group, Citizens for Sunshine, said that one of its members went to Gannon's office requesting to "inspect and copy" the settlement agreement but was denied access, *The Palm Beach Post* reported.

The agreement details the

\$1.9-million settlement Gannon's office reached with more than a dozen online travel companies. In the lawsuit, Gannon's office claimed that online travel companies, such as Expedia, Orbitz and Travelocity, were not giving the county all of the tourism taxes they collect for hotel rooms booked there, according to the *Post*.

Although legal settlements are typically considered public records

under state law, Gannon's office said it cannot release the agreement until it notifies the travel companies' attorneys. The terms of the agreement require the tax collector's office to give the travel

companies 10 days to ask a court to block release of the record, Gannon said.

The group filed the lawsuit in circuit court, requesting release of the document and seeking reimbursement of legal fees.

Source: The Palm Beach Post

Attorney compelled to comply with records request

DEFUNIAK SPRINGS – A judge recently ruled in favor of a public records requester, holding that an attorney, acting as the county's legal representative, was required to comply with the public records request.

Requester Suzanne Harris made a request to attorney George Ralph Miller for records related to a controversial Walton County land deal in which Miller served as special counsel. When

Miller failed to comply, Harris sued, claiming that Miller had violated the Public Records Law by failing to turn over the requested records and by failing to properly acknowledge receipt of the request.

Circuit Judge Howard LaPorte gave Miller 48 hours to fulfill the request for records and ordered him to cover Harris's legal costs.

LaPorte also ruled that Miller had

intentionally prevented Harris from obtaining the records to which she was entitled.

Another lawsuit involving the deal seeks reimbursement of an alleged \$345,000 a development firm made on the sale of the land for a traffic light and also demands the county be required to seek repayment of all funds it paid Miller in negotiating the deal.

Source: Northwest Florida Daily News

Department nixes records practice after complaint

LAKELAND – The Lakeland Fire Department changed its practice of requiring citizens to fill out a form when making public records requests.

The practice came under scrutiny when an individual challenged it and called *The Ledger (Lakeland)*. *The Ledger* then called the department and

complained.

The form required the requester's name, address and phone number, title and signature.

Twenty-eight forms had been filled out since July 2011, according to *The Ledger*.

City Attorney Tim McCausland said that although the form can't be required,

it can be helpful for workers providing public records because it gives them documentation of what someone is asking for.

Fire Chief Gary Ballard said the department is eliminating the practice altogether.

Source: The Ledger (Lakeland)

Hospital sues counsel over failed merger

NEW SMYRNA BEACH – The Southeast Volusia Hospital District board of commissioners voted unanimously to file suit against its former attorney for faulty legal advice.

Board members voted to file a legal malpractice claim against Orlando attorney Jim Heekin for his advice to keep the public out of discussions regarding a merger between Bert Fish Medical Center and Adventist Health Systems, according to the *Daytona Beach News-Journal*.

That merger was thrown out in 2010 by Circuit Judge Richard Graham, of the 7th Judicial Circuit in Daytona, after it was found that the 21 closed meetings held over 16 months that resulted in the merger violated Florida's Sunshine Law, the *News-Journal* reported.

The Bert Fish Foundation, a nonprofit organization, filed suit to recoup \$3.4 million it incurred in administrative and legal fees as a result of the failed merger.

Source: *Daytona Beach News-Journal*

Judge: Police employment polygraphs can be redacted

ALACHUA COUNTY – An appellate judge ruled that the city of High Springs did not violate the Public Records Law when it redacted portions of a pre-employment polygraph report before releasing it to the public.

Clinton Knowles was required to take a polygraph test as part of the pre-employment process to become a reserve police officer. When the city redacted a series of questions and answers from the report following a public records request for the report, a High Springs resident filed suit.

On appeal, Associate Judge James H. Daniel for the 1st District Court of Appeals in Alachua upheld the trial court's ruling, holding that examination questions and answers prepared and received by a

government agency for the purpose of employment are exempt from the Public Records Law.

"Given the plain meaning of the language contained in the exemption, we agree with the trial court that the City properly redacted the questions and answers from this particular pre-employment polygraph examination," the appellate ruling stated.

The court held that the exemption makes no distinction in its application as to the subject matter being tested, nor does its application depend upon the type of examination—whether written or oral—being administered by the government agency, according to the ruling.

Source: *RCFP.org, Rush v. High Springs, Florida*

Commissioners vote to keep airport security plans secret

IMMOKALEE – Immokalee Regional Airport's security plans will be kept secret despite requests by at least one commissioner to view the plans.

Commissioner Georgia Hiller said she made her request to see the airport security plans following concerns regarding airport security. But Commission Chairman Fred Coyle opposes the release, reported the *Naples Daily News*.

"There is no reason for any commissioner to have access to the plan," Coyle said.

Florida law requires that general aviation airports that are open to the public and have at least one runway more than 4,999 feet long have an approved current

airport security plan on file with the Florida Department of Transportation.

But only the security plans of international airports are exempt from Public Records Law, and Immokalee is not an international airport, according to the *Daily News*.

Airport officials said the plans are restricted to the airport manager, the Department of Homeland Security, the Collier County Sheriff's Office, the Florida Department of Law Enforcement and the Florida Department of Transportation.

Commissioners voted 3-2 to keep airport security private.

Source: *Naples Daily News*

Environmental groups sue commission for alleged violations

TALLAHASSEE – Two environmental groups have filed suit against the Florida Fish and Wildlife Conservation Commission, accusing the commission of violating the state's Sunshine Law.

Their lawsuit alleges a technical advisory committee held closed door meetings to draft a plan for cutting off public boating access to part of

Fisheating Creek in Glades County.

The groups, Save Our Creeks and Environmental Confederation of Southwest Florida, say the plan would cause environmental damage. They claim it calls for building roads through wetlands and dumping 50 million pounds of sand into the creek to block public navigation.

Source: *The Associated Press*

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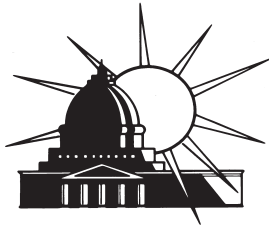
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Encouraging disclosure of government information

In an ideal world, open government and disclosure of information would not be a chore.

Governments would make information available to citizens by putting information online in multiple formats and in searchable platforms.

Some governments take the initiative and clearly disclose data and information to citizens in a way that is both useful and easily understood. Others need some encouragement.

Sunshine Week, which takes place mid-March, is an annual celebration of transparency held to bring attention to open government.

To celebrate, Sunshine Review, a national nonprofit organization committed to state and local government transparency, awards Sunny Awards to recognize governments that make key information available to constituents online using a 10 Point Transparency Checklist.

The Back Page

By Diana Lopez

state or local government website earns and Sunshine Review gives Sunny Awards to governments that post online 9 or 10 of the items requested on the transparency checklist.

Sunshine Review's desire to encourage governments is one of the reasons that the 10-point checklist requires only the availability of key information instead of more extensive, detailed data. The goal of rating governments on information available online is ultimately more government information available online.

Proactive disclosure, or the idea that governments post information before citizens or laws ask them to do so, saves the trouble and resources that come with answering public records requests. These requests are a great tool, but ideally citizens do not have to ask for information because governments already provide it online.

In addition to the tax dollars saved, providing key information and data online allows citizens to hold government officials accountable and find waste and fraud, accidental and deliberate.



Diana Lopez

The reality, however, is that of the more than 6,000 governments rated since 2008, Sunshine Review has awarded only 365 Sunny Awards.

Why so few? Most governments fail to provide their citizens with basic, foundational information.

There is little satisfaction in noting that a government website lacks key information. There is great satisfaction, however, in working with a government to get as much information posted online as possible.

Through collaboration with governments, Sunshine Review has ensured the online availability of contracts with vendors, city and county budgets and information as straightforward as the contact information for elected officials.

Sometimes, governments have this information but don't think of making it available online until someone asks. Usually talk of open government refers to governments engaging citizens—however, citizens also need to work with governments.

Collaboration with the public is not always an approach governments take when it comes to transparency. There are times when governments act as adversaries and block access to public information.

In these cases, it is important for citizens and professionals, like journalists, to persist in demanding information. Citizens must reach out to Attorneys General and/or ethics commissions and threaten lawsuits.

The beauty of proactive disclosure is that governments are serving citizens and also beating them to the punch. When governments disclose information before someone specifically asks for it, there is no need for a struggle to get information.

Sunshine Review's Sunny Awards celebrate those open and transparent governments. May next year bring increased transparency and even more Sunny Awards.

Diana Lopez is Senior Editor of Sunshine Review. Lopez writes about state and local government transparency issues and investigates local governments through public records requests. For more information on the Sunny Awards, see http://sunshinereview.org/index.php/Sunny_Awards.