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# THE BRECHNER REPORT

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October 2013

## State Attorney imposes 'Textgate' fines for officials

ORANGE COUNTY – State Attorney Jeff Ashton determined that Mayor Teresa Jacobs and four county commissioners violated the Public Records Law when they deleted text messages about government decisions, according to the Orlando Sentinel.

Following an investigation into the “textgate” scandal, the Florida Department of Law Enforcement and the state attorney did not file criminal charges, but imposed a \$500 fine on the officials, the paper reported.

Last year, Orange County commissioners blocked a referendum for paid sick time, according to the Sentinel. Public records indicate that several of the commissioners had been contacted by lobbyists who

opposed the referendum, but text messages concerning the matter had been deleted or lost.

Officials said they would pay the fines, but several of them still face a pending civil lawsuit filed by Citizens for a Greater Orange County on the open government violations, according to the Sentinel.

Orange County spent approximately \$120,000 in legal fees on the “textgate” scandal, the paper reported.

Mayor Jacobs has already suggested that text-tracking software should be used on county phones and encouraged commissioners to use the phones when conducting government business, the Sentinel reported.

*Source: Orlando Sentinel*

## Tallahassee PD deletes info from police reports for media

TALLAHASSEE – The Tallahassee Police Department (TPD) released different versions of police reports to media and non-media requesters, according to an investigation by the Tallahassee Democrat. The investigation found that the TPD redacted much more information on reports given to the media.

Democrat reporters who identified themselves as media requested 10 police reports from the TPD, while staffers who did

not identify themselves as media requested the same reports and compared the content in each report. Reports given to the media often only had the basic information about the crime, the Democrat reported.

Officer Dave Northway, spokesperson

for the TPD, said that much of the information was redacted to protect ongoing investigations. The TPD acknowledged that they made some mistakes in altering reports, according to the Democrat.

Law enforcement agencies are required under Florida’s Public Records Law to disclose general crime information, but there are many exemptions that allow agencies to use their discretion about what to disclose, the Democrat reported.

In the future, “reports are going to more closely reflect each other,” Northway said.

“I’m always going to protect the integrity of our case if you ask me for information,” he said. “That’s my job as a police officer, and that’s our job as a police department is to protect our victims.”

*Source: Tallahassee Democrat*

ACCESS  
RECORDS

ACCESS  
RECORDS

## Judge rules CIA can no longer avoid FOIA requests

WASHINGTON, D.C. – A federal district judge ruled the CIA can no longer use the CIA Act of 1949 to avoid Freedom of Information Act disclosures, according to the National Freedom of Information Coalition (NFOIC).

Judge Beryl A. Howell for the U.S. District Court for the District of Columbia ruled the CIA wanted to interpret the act too broadly, which would allow them to withhold almost all information about CIA operations.

FREEDOM  
OF INFORMATION

The opinion stated the CIA will only be exempt under the act from releasing personnel information. Information on how the agency functions is no longer protected, according to the NFOIC. Kel McClanahan, attorney for the plaintiff, National Security Counselors, said agency function requests are withheld most by the CIA.

This ruling is “an important victory for transparency,” said Ken Bunting, executive director of the NFOIC. “This is an important ruling that will stifle the CIA in its long-running efforts to create such a blanket exemption out of whole cloth.”

*Source: National Freedom of Information Coalition (nfoic.org)*

## Winter Haven recreated minutes, violates records law

WINTER HAVEN – State Attorney Jerry Hill informed Winter Haven city officials that a 13-month delay in recreating meeting minutes violated the law, according to The Ledger (Lakeland). Hill also stated in his letter to commissioners that further violations could result in criminal charges.

In June 2012, The Ledger discovered that 44 meeting minutes were missing, and 13 months after that initial investigation, five meeting minutes were still missing, according to The Ledger. The report detailing the delay in recreating the remaining missing minutes prompted Hill's follow-up investigation, The Ledger reported.

While some commissioners believed that audio recordings of workshop

meetings were sufficient, City Manager Deric Feacher assured Hill that city officials have been informed of the law and have implemented a new meeting minutes policy, according to The Ledger. Meeting minutes will be created within a week of each meeting to avoid future problems, according to officials' response to Hill. Feacher officially endorsed this procedure at the commission's Aug. 26 meeting.

Hill said the investigation is part of a continued attempt by his office to monitor public records violations, according to the paper.

"There is no excuse for the government not complying," Hill said. "But I feel this is an oversight and it will not happen again."

*Source: The Ledger (Lakeland)*

## Paper wins public records suit

GADSDEN COUNTY – Contractor Aramark agreed to drop its appeal of a public records suit originally filed by the Tallahassee Democrat last year. A Gadsden County judge ruled in favor of the Democrat, holding that state contractors are subject to the state Public Records Law, according to the Tallahassee Democrat.

Aramark contracted with the Florida State Hospital in Chattahoochee to privatize housekeeping and maintenance jobs, according to the Democrat. When the paper asked

how many current workers were re-hired, Aramark refused to disclose the number because it said Florida's public records law did not apply to them.

Aramark initially appealed the county court's ruling to the 1st District Court of Appeals, but agreed to drop the appeal and to pay some of the Democrat's legal fees. This case marked an important victory for public records in the state of Florida, according to the Democrat.

*Source: Tallahassee Democrat*

## Clerk seeks records amidst FDLE investigation

BREVARD COUNTY – The current clerk of courts for Brevard County has requested attorney records pertaining to the Florida Department of Law Enforcement's (FDLE) investigation of former Clerk Mitch Needelman, according to Florida Today.

Scott Ellis, current clerk of courts, asked for the information because Needelman hired attorneys with money from the clerk's office, Florida Today reported.

Ellis has not received any of the records because the lawyers said they are exempt under attorney-client privilege, according to the paper. Ellis said he plans to file a lawsuit if he does not receive the lawyer's files.

The FDLE investigated Needelman following a multi-million dollar contract to BlueWare LLC to scan court documents. The investigation revealed that the contract was awarded in exchange for secret contributions to Needelman's political campaign, according to Florida Today. Needelman was charged with bribery, bid tampering and official misconduct, the paper reported.

*Source: Florida Today*

## City of Groveland faces Sunshine lawsuit

GROVELAND – The city of Groveland and two public officials are facing a lawsuit filed by a community organization for allegedly violating Florida's Open Meetings Law, according to The Daily Commercial (Leesburg).

Citizens for Sunshine Inc., a Sarasota-based group, believes that a parking lot conversation about Groveland's transfer of police

**OPEN  
MEETINGS**

dispatching services to Lake County violated the state's Open Meetings Law, according to The Commercial. Mayor James Gearhart, Vice Mayor Tim Loucks and a police sergeant allegedly discussed the matter in a grocery store parking lot, The Commercial reported. The issue was pending before the city council.

Groveland city officials postponed reassigning the dispatch services when Citizens for Sunshine asked the

court for an emergency injunction to prevent the transfer, according to The Commercial.

In addition to the lawsuit, the Florida Department of Law Enforcement is investigating the matter, according to The Commercial. The attorney for Citizens for Sunshine told The Commercial that it was continuing to review the matter and the initial lawsuit may be amended.

*Source: The Daily Commercial (Leesburg)*

## Pensacola holds open meetings presentations

PENSACOLA – The City of Pensacola held three presentations on state Sunshine and Public Records laws in late August following an investigation by State Attorney Bill Eddins that some public officials were behaving inappropriately, according to the Pensacola News Journal.

The presentations were designed to orient city council members, staff and citizens with Public Records Law and Sunshine Law to “kickoff” an ongoing initiative, Hayward told the News Journal.

In addition to charges of misconduct among officials, Eddins wrote the Greater Pensacola Chamber to remind them that they must comply with the Sunshine Law. The chamber had previously been making important decisions in secret, according to the News Journal.

Hayward told the News Journal that the city has improved its computer programs to better accommodate citizens’ records requests.

“I want to be a leader on this,” Hayward said. “There’s nothing that we need to hide or are trying to hide.”

Source: *Pensacola News Journal*

## Federal judge declassifies NSA monitoring opinion

WASHINGTON D.C. – A federal judge sitting on the Foreign Intelligence Surveillance Court (FISC) ruled that the National Security Agency (NSA) violated the constitution in its surveillance of Americans, according to a classified opinion that was recently released.

Judge John D. Bates, then acting as chief judge on the FISC, said in his 2011 opinion that the NSA had continually misled the court about how domestic surveillance was being conducted, according to The New York Times.

The opinion concerned an NSA program which monitored domestic Internet communications with persons

overseas that may be subjects of foreign surveillance, The Times reported. As a result of this program, the NSA also gathered purely American communications, and the court found that the NSA misrepresented the scope of the program, according to The Times.

The ruling was declassified based on a Freedom of Information Act lawsuit filed by the Electronic Frontier Foundation, according to The Times. The opinion was released in the wake of leaks concerning the NSA surveillance program by former NSA contractor Edward Snowden, The Times reported.

Source: *The New York Times*

### COURTS

## Court documents remain private

WASHINGTON D.C. – The U.S. Court of Appeals for the Federal Circuit ruled that Apple and Samsung do not have to reveal confidential financial and other business information to the public during the ongoing lawsuit, according to Bloomberg.

Initially, the District Court in California ordered both companies to produce all exhibits used at trial, but each party appealed to keep the information private, Bloomberg reported. Media organizations like the Los Angeles Times, The Associated Press and The New York Times all pushed for the information to be released to the public, according to

Bloomberg.

The Federal Circuit, which is designated to hear patent appeals, said the documents should remain private because they could cause competitive harm to both companies, Bloomberg reported.

“We recognize the importance of protecting the public’s interest in judicial proceedings...” said Judge Sharon Prost in the appellate opinion. “That interest, however, does not extend to mere curiosity about the parties’ confidential information where that information is not central to a decision on the merits.”

Source: *Bloomberg.com*

### PRIVACY

## Paper’s meetings suit to proceed

JACKSONVILLE – A judge denied the city of Jacksonville’s challenge to a lawsuit brought by The Florida Times-Union alleging that the city violated the state’s Open Meetings Law, The Florida Times-Union reported.

The lawsuit centers on whether the city violated state Sunshine Law when it discussed potential changes to the Police and Fire Pension Fund in a private meeting, according to The Times-Union. The city

denies that it broke the law because the negotiations were part of a court-ordered mediation, The Times-Union reported.

The ruling by Circuit Court Judge Waddell Wallace will allow the lawsuit to proceed, The Times-Union reported.

“We are pleased with Judge Wallace’s decision,” said Frank Denton, editor of The Florida Times-Union. “We look forward to the resolution of this case on behalf of the public’s right to know.”

Source: *The Florida Times-Union*

### ACCESS MEETINGS

### THE BRECHNER REPORT

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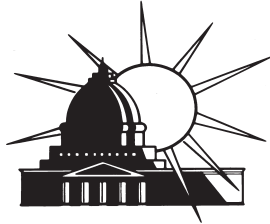
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## Historical understanding key to maintain transparency

The related concepts of transparency, freedom of information (“FOI”), and the right to know represent an ideal that can solve widespread institutional failures of administration and democracy. Over the course of several articles, I have contextualized and historicized these ideals in order to deepen our understanding of the imperfect contemporary state, and of how we think about our desire for a better one. My overall thesis has been that transparency and the other concepts are impossible ideals to accomplish, based on certain muddy and untested assumptions, and likely not to be particularly popular or workable if imposed in their strong, ideal form. None of this is to deny that a visible government is a key attribute of democracy, or that transparency is almost always better than secrecy. But it is a



*Mark Fenster*

way to understand why the contemporary, sprawling state often disappoints those committed to a truly popular, fully accountable, participatory democracy, and it is intended

to help lead to a more fruitful understanding of transparency and secrecy as issues above all of information control. These concepts developed in a specific historical context. For more than six decades, a broad transparency advocacy movement, composed of a diverse array of organizations operating from the transnational to local level, has attempted to address and mitigate the fundamental democratic and administrative problems that information asymmetry creates for legitimate and effective governance. At its inception in the U.S., led by press organizations like the American Society of News Editors, the movement understood and defined excessive state secrecy as a problem caused by a scarcity of laws—one that could be solved by a powerful, wide-ranging, and publicly enforceable legal right to government information. The quintessential campaign, which had historical antecedents and contemporaries in the United States and elsewhere, was the mid-twentieth century effort in the U.S. that resulted in enactment of the federal Freedom of Information Act in 1966. That campaign has never ended. Numerous contemporary domestic and international

non-governmental organizations (NGOs), including the Brechtner Center, endeavor to preserve, strengthen, and extend open government mandates. But the results of the campaign’s labors, while considerable, have not fully solved the problem that it sought to address, at least for the many advocates in the U.S. and around the world who regularly complain about the laws’ limited scope and their inadequate enforcement. In recent decades, several new networks and groups have responded to these frustrations by advocating alternative means to open the state to public view—including Transparency International and other anti-corruption NGOs, the

“digital transparency” movement that attempts to use information technology to enable public access to government data, and WikiLeaks. Law, their efforts imply, is not the answer to secrecy, or at least not the only solution. These diverse efforts share a commitment to the nearly religious, normative concept of transparency around which they are organized, while each focuses on different issues and offers a distinct set of policy prescriptions. “Transparency” is a goal, a happy ending that inspires very different policy stories. I’ve discussed these historical developments, noting their important ideological underpinnings during the Cold War period in which advocates developed them. I’ve also talked about the limitations and imperfections of classically liberal concepts of “rights” and “freedom” in their application to the problem of state information, as well as the historical, contingent nature of legal rights as a means to enforce ideals of transparency and open government, and the historical, contingent nature of these ideals themselves. My critique and contextualization of them are not intended to deny the importance of transparency and open government; rather, they are intended to help deepen our commitment to democratic ideals and to understand why and how we get so frustrated when our democratic institutions fail to meet them.

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By Mark Fenster