
THE BRECHNER REPORT

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Gov. Scott, Cabinet settle public records case with taxpayer funds

TALLAHASSEE – Gov. Rick Scott and the state have agreed to use \$1 million of taxpayer money to settle several public records lawsuits, according to The Miami Herald.

Scott and the state will 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 will pay his own lawyers an additional \$300,000 for his defense related to this settlement and another public records lawsuit settled in June, The Miami Herald reported.

The conflict between Scott and Tallahassee attorney Steven Andrews began over a piece of land near the governor's mansion that the state wanted

to purchase, the AP reported. The battle broadened into several lawsuits, claiming that Scott and other state officials, including Attorney General Pam Bondi, violated Florida's Public Records Law by ignoring public records requests, according to the AP.

The money for the settlement will come from Scott's office, Bondi's office, the Department of Environmental Protection and the Department of State, The Miami Herald reported.

Jackie Schutz, a spokeswoman for Scott, said the money will come from existing budgets and will not require approval from the state Legislature, according to the AP.

Scott's administration defends the use of taxpayer money to settle the dispute, 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 told the AP.

Source: The Associated Press, The Miami Herald

**ACCESS
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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 last October, 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, but a final decision has not been made on the matter, the paper reported.

Source: Orlando Sentinel

**ACCESS
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Police dept. improperly denied records

TALLAHASSEE – A Florida appeals court ruled the Tallahassee Police Department improperly withheld public records, according to the court opinion.

The 1st District Court of Appeal found that an email and attachment concerning a domestic violence investigation of Florida State University football player Karlos Williams was not exempt from Florida's Public Records Law, according to the opinion.

Michael Barfield filed a public records request with the Tallahassee Police Department for any records generated in the investigation of Williams, the opinion stated. When the documents

were not provided, Barfield filed an

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emergency petition with the court for the records, according to the opinion.

The trial court found the information Barfield requested was the subject of an ongoing criminal investigation and was therefore exempt under law, the opinion stated.

The appeals court reversed the trial court's ruling, stating "while 'active criminal investigative information' is considered exempt from public records disclosure requirements," the police department should have redacted such information. The court ruled that TPD was required to disclose at least some of the information included in the email and attachment in response to Barfield's public records request.

Source: Michael Barfield v. City of Tallahassee, No. 1D14-5530

FREEDOM OF INFORMATION

AP sues for access to FBI's fake news article

WASHINGTON – A lawsuit was filed against the U.S. Department of Justice after the FBI failed to provide public records concerning its impersonation of a news organization, according to The Associated Press.

The AP and the Reporters Committee for Freedom of the Press jointly filed the lawsuit concerning a 2014 Freedom of Information Act request for FBI documents relating to a fake AP news article, the AP reported.

The FBI sent the fabricated article to a boy suspected of making a bomb threat

in order to plant surveillance software on the boy's computer, according to the AP. An undercover FBI agent also posed as an AP reporter, asking the boy if he would review a draft of the news article, the AP reported.

In a 2014 letter to then Attorney General Eric Holder, AP General Counsel Karen Kaiser said "The FBI both misappropriated the trusted name of The Associated Press and created a situation where our credibility could have been undermined on a large scale," according to the AP.

The AP's Freedom of Information Act request also seeks to uncover how many times since 2000 the FBI has impersonated a media organization in order to plant malware, the AP reported.

The FBI says it may take two years to comply with the request, according to the AP.

Source: The Associated Press

FOIA fee exemption broadened

WASHINGTON – Non-traditional news organizations are entitled to FOIA request fee waivers, according to a ruling issued by the District of Columbia Circuit Court of Appeals.

Cause of Action, a nonprofit organization, filed the lawsuit after the Federal Trade Commission denied its public-interest and news-media fee waiver applications for several FOIA requests, according to the opinion.

Chief Judge Merrick Garland of the D.C. Circuit Court of Appeals wrote that advocacy and news organizations may acquire a public-interest waiver, even if the requester does not reach a "wide audience," so long as the requested information will serve to increase the public's understanding of government issues. Such organizations do not need to have a minimum number of distribution

outlets, making solely online distribution enough to qualify for the exemption, according to the opinion.

The court emphasized that FOIA allows for non-traditional news outlets to also qualify for the news-media waiver, regardless of the potential public interest in the information. This exemption "focuses on the nature of the requester, not its request," Garland wrote.

Start-up news organizations may also be entitled to a news-media waiver even if they do not have an established publication record, according to the opinion.

The case was remanded for further proceedings to determine whether Cause of Action qualifies for either exemption in light of the court's ruling.

Source: Cause of Action v. Federal Trade Commission, No. 13-5335

Parent sues over school meeting

COLLIER COUNTY – A parent filed a lawsuit against a district school superintendent, claiming she violated Florida's Sunshine Law, according to the Naples Daily News.

Parent Steven Bracci is suing Collier County School District Superintendent Kamela Patton, alleging meetings regarding a school wellness program did not comply with the Sunshine Law, the paper reported.

Local leaders, including Patton, have been planning a wellness initiative in the

area, which is designed to be a public-private partnership, according to the paper. Bracci argues that the school board and the public should have been part of the planning process since the initiative deals with potential school policies, the paper reported.

The school board voted to postpone a vote on the initiative until a later meeting, according to the paper. Bracci claims that even waiting to formally consider the plan violates the Sunshine Law, the paper reported.

Source: Naples Daily News

**ACCESS
MEETINGS**

Threat to First Amendment, media access

WINTER PARK – Winter Park City Commissioners discussed restricting citizen board member discussions with the media, according to the Orlando Sentinel.

Winter Park Mayor Steve Leary and Commissioner Sarah Sprinkel met to discuss limiting the city's independent citizen panels, independent bodies comprised of citizens that advise city officials and commissioners on important issues, from speaking about public matters with the media, the paper reported.

Leary is holding a series of one-on-one meetings with individual City Commission members to discuss "general matters," the paper reported. During one of these meetings, Leary and Sprinkel said the citizens on these panels should seek guidance and direction

from the city before speaking

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to the media, the paper reported.

Leary said free discussion between the board members and the media "puts added pressure on the city," the paper reported. Leary also told the paper he was not trying to limit the citizens' First Amendment rights, but compared representing the city to working for a company.

Winter Park board members argued they are not city employees and should be able to speak about important public matters without the city's permission, according to the paper.

Source: Orlando Sentinel

Watchdogs sue Clinton over email server

WASHINGTON, D.C. – A watchdog group filed a lawsuit against the U.S. State Department and the National Archives and Records Administration regarding Hillary Clinton’s emails, according to the complaint.

Cause of Action, a nonpartisan nonprofit group, filed the lawsuit to retrieve Clinton’s emails from her private email server, the complaint stated.

Cause of Action alleges that Clinton violated the Federal Records Act, which prohibits officials from removing records from government

agencies, according to the complaint.

“As Clinton knew or should have known, the Federal Records Act did not authorize her to set up her own recordkeeping system or to maintain emails on a personal server or use a private email account without ensuring that the emails were concurrently archived in the State Department’s official recordkeeping system,” the complaint states.

Source: Cause of Action Institute v. John F. Kerry and David Ferriero, No. 1:15-cv-01068

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Ban on firearm speech upheld

ATLANTA – A federal court upheld a Florida law that prohibits doctors from asking questions about patients’ gun ownership, according to The Miami Herald.

The law prohibits physicians from entering information into medical records if the physicians know the information isn’t “relevant” to patients’ medical care, safety, or the safety of other people, the paper reported.

The 11th Circuit Court of Appeals issued a revised ruling, overturning a previous injunction by a federal district judge in 2012 with a 2-1 vote, according to the paper.

Judge Charles Wilson dissented,

arguing the law violates physician’s First Amendment rights, according to the opinion. “The act prohibits or significantly chills doctors from expressing their views and providing information to patients about one topic and one topic only, firearms,” Wilson wrote.

The American Bar Association has asked the court to review the decision again before the entire bench to reconsider the First Amendment implications, according to the ABA’s amicus brief.

Source: The Miami Herald, Wollschlaeger v. Florida, No. 12-14009, Amicus Curiae Brief of the American Bar Association, Wollshlaeger v. Florida, No.: 1:11-cv-22026-MGC

Suit filed over redistricting law

TALLAHASSEE – A lawsuit was filed in federal court to challenge the constitutionality of the Fair Districts amendments of the Florida Constitution, according to The Miami Herald.

A bipartisan group filed the lawsuit against Secretary of State Ken Detzner, claiming the anti-gerrymandering amendments are unconstitutional under the First Amendment, the paper reported. A member of the group argued that the invalidation of the existing congressional map was “overreaching” and redefined protected political speech, according to the paper.

The group also claims that the amendments are void for vagueness,

serve as a prior restraint on speech, and sanction viewpoint discrimination against the Republican Party, according to the complaint.

The lawsuit was filed after the Florida Legislature adjourned its special session without an agreement on a new congressional district map, the paper reported.

Several members of the group also challenged the release of their private emails in related pending redistricting lawsuits, claiming it violates their First Amendment rights, according to the paper.

Source: The Miami Herald; Walter Bryan Hill et al., v. Ken Detzner, No. 3:15-cv-00380-MCR-EMT

Online access concerns lawyers

JACKSONVILLE – A large group of Jacksonville attorneys recently gathered to discuss online access to court records, according to The Florida Times-Union.

Attorney Hank Coxe helped organize the meeting, where Duval County Clerk of Courts Ronnie Fussell and others explained why the system changed and what attorneys can expect from the changes, the paper reported.

Attorneys are now considered members of the public and sometimes have to wait a week or longer for records, according to the paper. Attorneys worry the wait may hinder their ability to

research and choose cases, the paper reported.

Fussell said attorneys and the public can expect to wait for records, but can come to the courthouse if they need immediate access to the records, the paper reported.

Duval County began offering records online in July following a Florida Supreme Court order mandating the public should be given the same access to online court records as attorneys, according to the paper. The county has a backlog of 3,300 records, the paper reported.

Source: The Florida Times-Union

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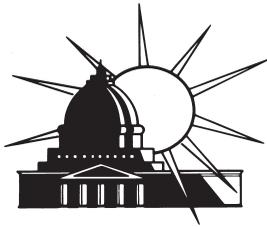
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Records laws crucial to investigative journalists, public

The deal was pitched as a good one for the public: The government would rescue the taxpayer-owned Los Angeles Memorial Coliseum from a corruption scandal and financial ruin by turning it over to the University of Southern California, a private institution.

But the deal turned out to be a bust for the taxpayers, and it was cut almost entirely in closed-door meetings and secret memos.

The city, county and state officials who run the Coliseum left the public in the dark month after month as they negotiated away control of the stadium. The Coliseum, a national historic landmark, has hosted two Summer Olympics

while serving as home over the years to three NFL teams, the Los Angeles Dodgers, and the football programs at UCLA and USC.

The officials were in a hurry to unload the property because of the heat of a bribery

and kickback scheme that The Los Angeles Times uncovered, leading to criminal charges against three Coliseum executives and three people who did business with the stadium. The Times investigation depended heavily on documents obtained through the California Public Records Act, such as expense reports, credit card receipts, purchase orders, invoices and the like.

The Times also mined numerous records from the state's registry of corporations, city and county business offices and the Department of Motor Vehicles. All the material enabled the newspaper to establish financial connections between the Coliseum managers and the business interests they are suppose to oversee. One executive has been charged with taking more than \$2 million from two rave concert promoters and other interests that used the Coliseum. A second executive has pleaded guilty to a felony charge in connection with payments a Coliseum contractor funneled to him through a Miami bank.

In the meantime, The Times set out to break through the



Paul Pringle



Rong-Gong Lin II

wall of secrecy the Coliseum Commission erected around the USC talks. The newspaper reported that the lease contract that was drafted with virtually no public input would grant the school almost all the revenues from the Coliseum and neighboring Sports Arena for 98 years.

To obtain the hidden records of the negotiations, and to open the commission's sessions to the public, The Times filed a lawsuit. But the commission didn't budge.

Instead, it forced a long and costly legal battle to keep its operations opaque – and lost.

In ruling in The Times' favor, Los Angeles Superior Court Judge Luis A. Lavin found there was "undisputed" evidence the commission sought to evade the state's open-government laws.

"We're talking about a public asset being transferred to a private entity with no public bidding," Lavin said of the Coliseum. "It looks like this was a train on a track to get this to USC."

He also said the commission, unchecked, would "decimate the letter and spirit" of the laws. "To paraphrase the late [U.S. Supreme Court] Justice Louis Brandeis, sunlight is said to be the best of disinfectants."

Lavin ordered all records released, forbid the commission from conducting such business in secret and ordered it to pay \$415,000 to cover the legal expenses of The Times and a First Amendment group that joined the lawsuit.

The records act was an essential tool in The Times' reporting on both the corruption scandal and the secrecy that enveloped this rouse government agency. However, a fundamental weakness in the act is that it takes a private-party lawsuit to enforce it. And fewer and fewer news organizations have the resources to spend hundreds of thousands of dollars on such cases.

Paul Pringle and Rong-Gong Lin II are reporters at the Los Angeles Times. They received the 2014 Brechner Award for their work associated with this story.