
THE BRECHNER REPORT

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Hogan wins privacy lawsuit against Gawker, \$140 million in compensatory and punitive damages

ST. PETERSBURG – A jury awarded Hulk Hogan a total of \$140 million in the trial against Gawker over its 2012 publication of Hogan’s sex tape, according to the Tampa Bay Times.

Hogan, whose real name is Terry Bollea, filed the lawsuit three years ago after Gawker posted a sex tape of Hogan and his best friend’s then-wife, according to The Hollywood Reporter. The case ultimately became a battle

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between Gawker’s First Amendment rights and Hogan’s right to privacy under the Fourteenth Amendment, the website reported. Hogan also won under a right of publicity action, according to the website.

No part of the actual sex tape, including the excerpt published by Gawker, was presented as evidence during the trial because Florida Circuit Judge Pamela Campbell ruled last year to maintain

certain court records closed, the website reported.

The verdict – \$115 million in compensatory damages and \$25 million in punitive damages – tipped the scale in favor of protecting the ex-wrestler’s privacy, the Tampa Bay Times reported.

Gawker plans to appeal the decision, relying on a First Amendment free speech defense, according to the paper.

Source: Tampa Bay Times, HollywoodReporter.com

FBI-Apple court battle over iPhone access ends

SAN FRANCISCO – The battle over a federal court order, requiring Apple to provide the FBI access to an iPhone used by Syed Rizwan Farook in the December mass shooting in San Bernadino, California, has ended. The FBI found a way to break into the phone without Apple’s help, The New York Times reported.

FBI officials wanted access to the phone’s encrypted data to search for clues regarding the shooting, including contact information, according to the paper. However, the iPhone’s password

mechanism is set up to erase all the data on the phone after 10 incorrect password attempts, the paper reported. Apple said it would have had to create new software to get around it, according to the paper.

Apple refused to provide access to the FBI, claiming it would be a violation of the company’s due process and First Amendment rights, the paper reported. The company also worried of the privacy implications created by a permanent “back door” that would

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allow law enforcement and foreign spies to circumvent encryption or password protection, according to the paper.

Apple engineers say the FBI’s undisclosed method for circumventing the software and breaking into the phone, which could leave iPhone users vulnerable to hackers, is unlikely to stay secret, the paper reported. Once it is exposed, the engineers believe they will be able to patch up the encryption hole, according to the paper.

Source: The New York Times

Miami-Dade to purchase up to 1,500 body cameras

MIAMI-DADE – Miami-Dade County Commissioners unanimously approved the purchase of up to 1,500 body cameras for the county police force. The cameras and storage will cost approximately \$1 million per year, according to The Miami Herald.

The decision comes after a two-year-long effort by Mayor Carlos Gimenez to insert body cameras in the proposed budget. He said the contract, which was awarded to a subsidiary of Safariland Group, would make Miami-

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Dade one of the country’s largest buyers of body cameras. The county already has a policy requiring officers to film most encounters with the public, the paper reported.

Police officials expect to implement all body cameras by the end of September 2016. Gimenez describes the plan as a way to reduce tensions and clarify encounters between police and the public. Juan Perez, the police department director, said the cameras are a countermeasure to cellphone

recordings made by the public, which he says can be misleading, according to the paper.

It is not clear yet whether members of the county’s SWAT team will be required to wear the cameras, according to the paper. The cameras record constantly, but require an officer’s activation to begin archiving footage. Perez said the county might be able to upgrade to cameras that automatically archive footage when an officer removes his gun or turns on the squad car’s siren, the paper reported.

Source: The Miami Herald

Whistleblower in Sunshine case sues ex-employer

SEBRING – Former Public Works Director Gregory Griffin has filed a lawsuit, alleging he was fired after blowing the whistle on three Sun 'n Lake supervisors for violating the state's Sunshine Law last year, Highlands Today reported.

The lawsuit against the improvement district, David Halbig and Richard Miller comes after Supervisors Halbig, Miller, and Curt McCullough were charged with

emailing each other about items on the board's agenda, according to the paper.

Starting in September 2014, Griffin made several oral and written complaints against Supervisor Halbig, claiming he was harassing Griffin, in violation of the district's policies, procedures, and code of ethics, the paper reported. Written complaints also raised concerns of Sunshine Law violations, according to the

paper.

Griffin was then terminated in September of last year after a 3-2 vote, with Halbig and Miller in favor of termination, the paper reported.

Griffin is asking the court for a temporary injunction against Sun 'n Lake, lost wages and benefits, and interest, according to the paper.

Source: Highlands Today (Sebring)

Court rejects SGA candidate's Sunshine claim

ORLANDO – An Orange County Circuit Court judge rejected a University of Central Florida student's claim that the Student Government Association's closed-door election violation hearings defy the state's Sunshine Law.

Student body presidential candidate Jacob Milich sued UCF's Board of Trustees and several SGA officials. Milich asked the court to put a stop to the election violation hearings, where the SGA would

discuss Milich's prohibited campaigning activities.

In addition to Sunshine Law violations, Milich claims that SGA violated his First Amendment rights, and the Family Educational and Privacy Rights Act.

Writing for the court, Judge Janet C. Thorpe found Milich failed to demonstrate a substantial likelihood of success on any of the three claims.

Ultimately, Thorpe found that Milich

was trying to trap the defendants in a "catch-22" by claiming that open election violation hearings would violate his FERPA rights and simultaneously alleging that having closed hearings would violate the Sunshine Law. "Milich's circular logic, although clever, does not entitle him to injunctive relief on the facts present in this record," she added.

Source: Milich v. University of Florida Board of Trustees, No. 2016-CA-002203-O

County lawyer opposes limits on public commentary

PALM BEACH – The Palm Beach County Commission reviewed a proposal to eliminate the public comment period of workshop meetings, but Palm Beach County Attorney Denise Nieman opposed the proposal, according to the South Florida Sun-Sentinel.

County Mayor Mary Lou Berger introduced the proposal because the public would still have a chance to speak at regular meetings, the paper reported. Workshop meetings are intended to be a forum for commissioners to learn about and discuss issues.

Nieman opposed the proposal because commissioners can still vote during a workshop meeting, according to the paper.

Current policy gives members of the public three minutes each to address the commission.

Two members have sued the county, arguing that this is not enough time, the paper reported.

Source: South Florida Sun-Sentinel

City adopts new cellphone rules

JACKSONVILLE – The Jacksonville City Council has adopted a new rule for cellphone use during meetings that phases out a complete ban imposed after council members were found last year to have exchanged text messages with a lobbyist aimed at swaying a vote during a meeting, The Florida Times-Union reported.

Council President Greg Anderson imposed the new rule, which prohibits council members from replying to text messages with registered lobbyists, union representatives or union members during meetings, the paper reported. If council members receive those types of messages, they are required to disclose them within

two days, according to the paper. This rule replaces a complete ban on cellphone use during meetings—a policy that had been in place since October of last year, the paper reported.

The city's ethics commission believes the rule does not go far enough to ensure complete transparency, the paper reported. The commission issued a statement advocating for a stronger policy and legislative action that would restrict other forms of electronic communication and would broaden the group of people that council members cannot engage with during meetings, according to the paper.

Source: The Florida Times-Union

FOI award winners announced

GAINESVILLE – Two reporters from The Miami Herald are the winners of the 30th Annual Joseph L. Brechner Freedom of Information Award for their heart-wrenching investigative series, "Innocents Lost."

Carol Marbin Miller and Audra D.S. Burch investigated Florida's child welfare agency by following the lives – and deaths – of children within the system.



The Brechner Freedom of Information Award is dedicated to recognizing excellence in reporting about freedom of information, access to government-held information, and the First Amendment. The award was established by the late Joseph L. Brechner, an Orlando broadcaster. Winners receive a \$3000 cash award at an annual ceremony in Gainesville, Florida.

More lawsuits over Clinton email records

WASHINGTON – The Republican National Committee added two more lawsuits to the dozens of cases seeking records and emails of Hillary Clinton and staff at the State Department, Politico reported.

The lawsuits, filed under the Freedom of Information Act, seek records sent to and from Clinton via text and email to senior aides, as well as records between senior State Department officials and Clinton's staff after her tenure as secretary of state, according to the website.

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The RNC claims it requested the records last year, but the State has not handed over any documents, the website reported.

The State Department has finished posting Clinton's emails that were ordered to be publicly released last year, but it continues to release other documents as part of additional lawsuits, according to the website.

Clinton also continues to face an FBI investigation into her private email setup during her time at the State Department, the website reported.

Source: *POLITICO.com*

Jacksonville officials respond to public records requests

JACKSONVILLE – The Florida Society of News Editors conducted an annual project examining state officials' compliance with public records laws by asking seven top officials to disclose text messages sent or received in one week. All but one complied, according to The Florida Times-Union.

State Attorney Angela Corey refused to comply. Assistant State Attorney Andrew Kantor responded on her behalf, saying that text messages are transitory and not public. But Barbara Petersen, president of the First Amendment Foundation, said Kantor relied on an old attorney general's opinion that transitory records are not public. She countered that text messages are not transitory, the paper reported.

Jacksonville Sheriff Mike Williams could not disclose his text messages because the office did not have a system for saving text messages during the time frame requested. The office has since begun to rewrite its policy so that employees must archive text messages, according to the paper.

Duval Schools Superintendent Nikolai Vitti and City Council President Greg Anderson said they did not have any public record text messages. The City Council has recently implemented a new rule requiring members to disclose text messages about government business within two days, The Times-Union reported.

Source: *The Florida Times-Union*

Commissioner cleared from Public Records Law complaint

TAMPA – An investigation into a \$1.35 million contract for the Go Hillsborough transportation initiative found that Hillsborough County Commissioner Sandra Murman did not knowingly violate the state's Public Records Law, the Tampa Bay Times reported.

Complaints raised against Murman said she had improperly disposed of text messages, which were public records, according to the paper. However, Hillsborough State Attorney Mark Ober said she did not violate the law knowingly, the paper reported.

Murman could have been fined up to

\$500 for the violation, according to the paper. However, Ober concluded that all commissioners and their staffs should instead get training on what the Public Records and Sunshine Laws require, and ordered Murman to sit through training within 180 days, the paper reported.

In his 12-page summary of the investigation, Ober wrote, "It is evident that within Hillsborough County government there was some confusion regarding what constitutes a public record and how it is to be preserved," according to the paper.

Source: *Tampa Bay Times*

Gov. Scott signs body camera bill

TALLAHASSEE – Gov. Rick Scott signed a bill, requiring Florida police departments that use body cameras to establish procedures for the proper use, maintenance, and storage of the recorded data, The Palm Beach Post reported.

While the new law does not require all police departments to use body cameras, the law mandates that those departments that do make use of the recording devices properly store audio and visual information in accordance with the state's Public Records Law, according to the paper.

Rep. Alan Williams, D-Tallahassee, said the bill "gives us the opportunity to go further to make sure that we are providing transparency to our citizens but also give accountability to our law enforcement," according to The Miami Herald.

As of October 2015, 18 police agencies in Florida used body cameras and 10 others operated pilot programs for the use of body cameras, The Miami Herald reported.

Source: *The Palm Beach Post, The Miami Herald*

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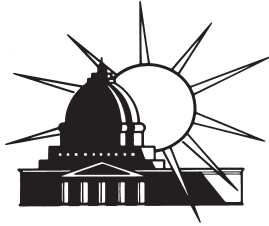
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Mental hospitals hide behind Public Records Law

In Florida, few places remain as secretive as mental hospitals.

The Tampa Bay Times and Sarasota Herald-Tribune learned that this last year, when the newspapers teamed up to investigate mental wards and the state agency that oversees them.

The results of that examination were horrifying.

After \$100 million in budget cuts and widespread layoffs, violence doubled. At least 15 patients died when they hurt themselves or were attacked by others. Workers were punched, stabbed, stomped, and thrown down stairs.

The human toll hid a stark lesson about Florida's public records: In the name of "patient privacy," the state does everything it can to shield the extent of the chaos.

The public should be able to find out the names of abusive workers. It can't. The public should know the facts surrounding every death inside a mental ward. It can't. The public should be able to tell just how violent these places have become. It can't.

In a state that prides itself on having some of the strongest open government laws in America, Florida fails to make basic records available — and sometimes the agency responsible for caring for this vulnerable population sets the ground rules for what is and is not a public record.

Take, for instance, the names of abusive workers. When the Times and Sarasota Herald-Tribune asked for the names of hospital employees who had abused or neglected mental patients in state hospitals, DCF refused. They said Florida Statute 415.107 — a law to protect the identity of victims and whistleblowers who report abuse — also insulated the names of abusers. The DCF's interpretation of the law means it is virtually impossible to learn the track record of people who fall asleep on the job, drag elderly patients across the floor or hit patients and try to cover it up.

"The law protects the identities of everyone involved in one of these incidents and we follow the law," DCF spokeswoman Michelle Glady told us.

Florida relies on similar privacy laws to protect hospital officials when someone dies. The only time these records get released is when the death is directly linked to abuse or

neglect — and DCF itself is the agency that gets to make that determination.

This means that we are sometimes not allowed to know the details of state investigations, even when there is clear evidence of abuse. This includes the details of a patient found dead in a boiling bath, with his skin melting from his face and body, and the fact that the employee who was supposed to check on him skipped the follow-up before he died.

This happened again and again, with reporters forced to spend weeks and, in some cases, months to piece together what happened from other sources — police reports, workers, personnel files. Florida says 55 people died in a mental hospital since 2009 but only four of those were the result of misconduct. The Times/Herald-Tribune found at least four other suspicious cases.

It is even harder to find out what happened when someone survives an attack. Florida has quietly raised the bar when it comes to reporting incidents, which means that fewer and fewer incidents enter the public domain.

In the past, a patient attack that led to a simple laceration would have produced a public report. Now, someone has to have suffered life-threatening injuries.

Despite this change, reporters — again relying on outside sources — found that violence spiked since the state began cutting budgets more than five years ago. By tapping other records, the Times/Herald-Tribune was able to learn just how bad the conditions are inside these institutions.

But this provides little solace to Floridians like Rachelle McNair. The South Florida woman spent 15 months trying to find out exactly how her son, Tuarus, died at Treasure Coast Forensic Treatment Center in Indiantown. The 27-year-old man was punched in the head and found to have 10 times the amount of Thorazine, an antipsychotic medication, in his system during an autopsy.

Again and again, Rachelle McNair tried to get more documents on the case. One afternoon, she showed up at the mental hospital to collect records. She was turned away at the door and told a hospital lawyer would contact her.

"My son is dead and no one will tell me what happened," McNair said. "The people responsible for him don't have to tell you a damn thing. It's sick."

Lenora LaPeter is a staff writer for the Tampa Bay Times.