

# The BRECHNER Report

Volume 25, Number 11 ■ 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

November 2001

## State denies public access temporarily

TALLAHASSEE – Responding to requests from state and federal law enforcement investigators, Florida has refused access to public records several times since the Sept. 11 terrorist attacks.

The Department of Highway Safety and Motor Vehicles shut down access to driver's license information on Sept. 19, saying that the records were part of an active criminal investigation.

Public access was restored the next day after officials installed a program to redact the addresses and social security numbers of

foreign nationals from 12 Middle Eastern or Southeast Asian countries who had received licenses during a certain time period.

After access was restored, the department continued to refuse requests to release applications made by the hijackers, as many as 13 of whom may have held Florida drivers' licenses or identification cards.

The Department of Agriculture and Consumer Services was asked to not release any information on approximately 150 people who hold crop-dusting licenses in Florida.

Attorney General Bob Butterworth told the *St. Petersburg Times* that the reason the Department of Highway Safety and Motor Vehicles gave for refusing driving records requests was incorrect.

His office is investigating whether state law allows the kind of shutdown the department initiated.

"Highway Safety made a decision to go along with the FBI and, you know, I don't blame them," Butterworth said. (9/20/01 – 9/26/01)

## Security plan would close records

TALLAHASSEE – A new statewide security plan proposed by Gov. Jeb Bush and Florida's emergency officials would in part close or limit access to some government records and expand police wiretap and surveillance powers.

The plan would limit public access to jail booking reports and other existing public records, such as driver's licenses, during ongoing criminal investigations. Documents related to police officer cell phones and pagers would be exempt.

The plan also would prevent the public from accessing reports on terrorism prevention plans and intelligence operations and assessments of the state's vulnerability to attacks.

Additionally, the plan would set up seven regional anti-terrorism task forces, create a statewide anti-terrorism database, and pay for police to get additional training.

The legislators chairing Florida's House and Senate security committees said they did not know specifically when the committees would consider the public records issues.

"The challenge is to protect and secure the state while at the same time not tromping on the Constitution," said state Sen. Ginny Brown-Waite, R-Brooksville. (10/2/01 – 10/8/01)

*Editor's note: See related commentary on page 4.*

## Anti-terrorism bill increases police powers

WASHINGTON – House and Senate versions of an anti-terrorism bill that passed in mid-October would expand law enforcement surveillance and search powers, including greater access to Internet communication.

The bill also would allow prosecutors to share transcripts from wiretaps and grand jury proceedings with intelligence agencies and open more educational records to law enforcement officials.

Both the House and Senate version of the bill would permit "roving wiretaps," which would authorize wiretapping of multiple telephone lines rather than a single telephone line. Officials also could delay notifying homeowners about

searching and photographing property and downloading computer files.

Software filtering system used to pick out e-mail messages may be used more under provisions allowing broader electronic surveillance. Civil liberties advocates argue that the bill could open average citizens' e-mails or Web surfing habits to law enforcement scrutiny, including Web use at public libraries.

Under the House version of the bill, the electronic surveillance provisions would expire after three years unless renewed by the president for two more years. A conference committee is reconciling the versions of the bill. (10/14/01 – 10/16/01)

## City rejects resolution to allow phone voting

BOYNTON – The Boynton Beach City Commission rejected a resolution that would have allowed commissioners to attend meetings via electronic media, including telephones.

The proposed resolution would have allowed commissioners to vote via

telephone, provided they gave the city 48 hours notice and were present on the telephone throughout the discussion of the matter being voted on.

The commission voted 3-2 to reject the proposal, which faced opposition from several community members. (8/21/01 – 9/5/01)

**ACCESS  
RECORDS**

**ACCESS  
MEETINGS**

## SEC sued over FOIA handbook

WASHINGTON – A legal news publisher has filed a federal Freedom of Information Act lawsuit against the U.S. Securities and Exchange Commission to access the SEC's FOIA handbook.

American Lawyer Media, which publishes 24 legal trade newspapers and magazines, wants a judge to review the agency's refusal to release its FOIA

handbook.

Initially, the SEC refused to release any part of the handbook but made several portions public following an administrative appeal of the decision.

The handbook's 200-plus pages, ironically, describe how the agency is supposed to deal with requests from the public for SEC records. (9/20/01)

## Department denies FCAT test request

LARGO – The Florida Department of Education has denied a public records request from a Pinellas County parent who wants to see her son's answer sheet and test booklet from the Florida Comprehensive Assessment Test (FCAT).

Betty J. Shields asked to see the test in order to figure out what areas her son needs to work on before taking it again this year.

Shields' son, an 11th-grader, took the test last year but did not score high enough to pass the state's graduation requirement.

Pinellas School Board Attorney John

Bowen sent a memorandum in support of Shields' request.

Bowen said Shields has a right to see the answer sheet and test booklet because it is part of her son's student record.

The Department of Education refused, saying the FCAT exam was considered confidential under Florida law.

"They are saying it's not a public record under Florida law," Bowen told the *St. Petersburg Times*. "The point is, it is a student record and the parent has a right to see it. They didn't even address that issue." (9/6/01 – 9/21/01)

## AGO: Juvenile felony complaints are public

TALLAHASSEE – Felony complaints and arrest affidavits involving a juvenile student and created by school police officers are public records, according to an opinion from Florida's attorney general.

Attorney General Bob Butterworth was responding to a question from Luis M. Garcia, the senior assistant board attorney for the Miami-Dade County school system.

"The fact that school students are involved in crimes on school property

does not convert standard law enforcement records into 'education records,' thereby making such material confidential ...," Butterworth wrote.

However, the felony complaints/arrest affidavits filed against juvenile students are subject to other exemptions of Florida's Public Records Law, including, but not limited to, information about active investigations and the names of sexual battery victims, according to the opinion.

(AGO 2001-64, 9/12/01)

## Court vacates order unsealing documents

ATLANTA – The 11th U.S. Circuit Court of Appeals vacated a lower court's order that would have unsealed documents in a lawsuit filed against Bridgestone/Firestone Inc.

The company settled the lawsuit with Michael and Kim Van Etten in the death of their son, Daniel, but media organizations including CBS, *The Washington Post*, the *Los Angeles Times* and the *Chicago Tribune* challenged the sealing of 15 documents in the case. Judge Anthony Alaimo, U.S. District Court in Brunswick, Ga.,

## Federal agency blocks map access

WASHINGTON – The National Imagery and Mapping Agency blocked public access to several maps because of concerns stemming from the Sept. 11 terrorist attacks.

The agency barred the U.S. Geological Survey and the Federal Aviation Administration from selling topographical maps made by NIMA. The agency also ordered the Library of Congress and the National Archives and Records Administration to deny public access to the maps.

Some maps are again available to the public while maps of U.S. military installations and detailed U.S. maps are still being reviewed by the agency. Access to nautical and aeronautical maps, which are used for navigation, was never blocked.

Most of the maps produced by NIMA are classified, but some are made available to the public. (10/3/01)

## Audit finds problems with Sunshine issues

WELAKA – An audit of the town's business practices identified several problems, including failure to keep proper public records and Open Meetings violations.

The \$30,000 audit found that Welaka failed to keep financial records the town is legally required to keep including records of two \$50,000 certificates of deposit.

Auditors also said that the town council did not provide the public with adequate notice of a scheduled vote to raise the council's pay and the mayor's pay. (7/31/01)

## DECISIONS ON FILE

*Copies of case opinions, Florida Attorney General opinions, or legislation reported in any issue as "on file" may be obtained upon request from the Brechner Center for Freedom of Information, College of Journalism and Communications, 3208 Weimer Hall, P.O. Box 118400, University of Florida, Gainesville, FL 32611-8400, (352) 392-2273.*

# AGO: Informal meetings, workshops can be held online

TALLAHASSEE – Airport authority members can conduct informal meetings over the Internet if proper notice is given and access made available to anyone who wishes to attend, according to Attorney General Bob Butterworth. However, when a quorum is necessary to take action at a meeting, the quorum must be present physically at the meeting place.

Butterworth issued the opinion in

response to a question from Leesburg City Attorney Joseph C. Shoemaker on behalf of the Leesburg Regional Airport Authority.

Workshops and informal meetings may take place on the Internet as long as the authority gives the public proper notice and provides interactive access to the public, including public access to the Internet via computers provided to the public by the airport authority.

Meeting notices would need to include the location of the public computers.

If the meeting requires an action where a quorum is required, then the members of the quorum must physically be in the same room, Butterworth wrote.

“Internet access to such meetings, however, may still be offered to provide greater public access,” according to the opinion. (AGO 2001-66, 9/19/01)

## Resident to challenge Sunshineruling

FERNANDINA BEACH – Resident Clark V. Hoshall Jr. filed a challenge in Florida’s 1st District Court of Appeal to a May ruling that cleared Nassau County officials of Sunshine Law violations.

Judge L. Haldane Taylor, 4th Judicial Circuit, ruled in May that county officials did not violate the Open Meetings and Public Records laws in deciding to relocate the county

courthouse to Yulee. (*Brechner Report*, July 2001) The appeal claims Taylor ignored evidence of Sunshine violations and alleges that a committee appointed by the board met illegally with contractors. Hoshall is asking the appeals court to void the vote that approved the move to Yulee and to void an agreement with the judiciary concerning the facilities. (9/22/01)

## Appeal dropped in Open Meetings case

KEY LARGO – Monroe County and Covanta Energy, formerly Ogden Water Systems, have dropped an appeal of a Sunshine ruling that voided a \$59.2 million contract for sewer work.

A judge ruled early this year that a county panel that helped select Covanta to design, build and operate sewers in Key Largo violated the state’s Open Meetings Law. The judge ordered the contract voided. (*Brechner Report*, July 2001)

The company and the county had appealed the decision, but both have withdrawn their appeals.

Covanta is one of three companies with bids that are being considered for the re-awarding of the contract. (9/4/01 – 9/11/01)

## PRIVACY

### Judge rules taping of official not a violation

PANAMA CITY – Public officials have no reasonable expectation of privacy when talking to a member of the public in the presence of others in a public building, a judge ruled as part of a covert tape recording case.

Don T. Sirmons, 14th Judicial Circuit, dismissed a charge against Randy Fowler that claimed Fowler had

illegally taped a conversation without the consent of the person being taped.

Fowler secretly taped a conversation with State Attorney Jim Appleman in the lobby of the State Attorney’s Office in Panama City. Sirmons ruled that the state’s secret taping laws do not apply to public officials conducting official business in public places. (7/6/01)

### Former bodyguards file suit against TV host

MIAMI – Three former bodyguards have filed a lawsuit against talk show host Rosie O’Donnell, claiming O’Donnell illegally taped their conversations.

A device, hidden in a smoke detector in O’Donnell’s home on Star Island, reportedly recorded conversations.

The suit claims O’Donnell and two

security companies invaded the bodyguards privacy and violated a Florida law that makes it a crime to record conversations without someone’s knowledge. O’Donnell reportedly has signed an affidavit in which she says she did not know that a security company had installed the listening device. (9/7/01 – 9/12/01)

## ADVERTISING

### Commission clears candidate of ad violations

FORT MYERS – The Florida Elections Commission cleared former Lee County Sheriff John McDougall of 69 violations, stemming from an ad run in *The News-Press* of Fort Myers.

The ad ran in September but didn’t

carry the required disclaimer of “paid political advertising.” (*Brechner Report*, May 2001) The elections commission dismissed the charges. A newspaper official described the incident as “an honest mistake.” (5/15/01)

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.jou.ufl.edu/brechner/>  
e-mail: [brechnerreport@jou.ufl.edu](mailto:brechnerreport@jou.ufl.edu)

**Sandra F. Chance, J.D., Director/Executive Editor**  
**S. Camille Broadway, Editor**  
**Jackie Thomas, Production Coordinator**  
**Meghan Morris, Production Assistant**  
**Stephen Harmon, Production Assistant**

*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* thanks Barnett, Bolt, Kirkwood & Long and Colleen Ahern for their contributions to this issue.