
THE BRECHNER REPORT

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Homeland Security Act weakens federal FOIA

WASHINGTON—The Homeland Security Act, which passed Congress shortly after the midterm elections, weakens the federal Freedom of Information Act and criminalizes agency leaks of business-provided information.

The Homeland Security Act authorizes the government to gather information from businesses about any weaknesses in the country's "critical infrastructure" and makes that information automatically exempt from the federal Freedom of Information Act. Government employees who leak this business-provided information could face up to a year in prison and/or up to a \$5,000 fine.

Additionally, the businesses are protected from civil liability if the information reveals wrongdoing and are immune from antitrust lawsuits for sharing the information with the government and each other. Sen. Patrick Leahy (D.-Vt.) called the act the "most severe weakening of the Freedom of Information Act in its 36-year history."

"This would hurt and not help our national security, and along the way it would frustrate enforcement of the laws that protect the public's health and safety," Leahy said. (11/19/02).

State attorney charges Welaka mayor with Sunshine violation

WELAKA—The State Attorney's Office has charged Mayor Gordon Sands with violating the state Open Meetings Law.

Sands is accused of meeting with a town council member in March 2000 in private to discuss upcoming votes they would take at a public meeting. Reportedly Sands met with former

Citizens approve two-thirds vote

Florida's voters approved an amendment to the state constitution that will require a two-thirds vote in the legislature in order to pass a new Public Records or Open Meetings exemption.

The state legislature placed the proposed amendment on the ballot following the 2002 session. Approximately 76 percent of Florida voters approved the amendment.

"We were able to give the voters an opportunity to vote to continue Florida's tradition of open government," state Rep. John Carassas told the *St. Petersburg Times*. Carassas was instrumental in the bill's creation.

Previously, an exemption only had to win a simple majority of the votes.

Although a higher number of votes now is needed to pass an exemption, it may make little practical difference in the number of new exemptions. (*Brechner Report, Annual FOI Report, July 2002*)

While applauding the new amendment, Brechner Center for Freedom of Information Director Sandra Chance strongly encouraged the media and the public to continue actively supporting

open government by closely monitoring legislative proposals. "In the last four legislative sessions, exemptions passed with such overwhelming support that only one would have failed to have sufficient votes under a two-thirds rule," Chance said. (11/6/02)

**ACCESS
RECORDS &
MEETINGS**

Two Kissimmee commissioners charged

KISSIMMEE—Two city commissioners in Kissimmee were charged with violating the state's Open Meetings Law.

Wendell McKinnon, recently re-elected to the city commission, and Bob Makinson, who stepped down from the commission due to term limits, were

charged with a misdemeanor Open Meetings violation. The State Attorney's Office also filed civil charges against the two men.

McKinnon and Makinson reportedly

met in private and discussed actions they would later take in public meetings. One of the items they allegedly discussed was giving money to Kissimmee's sister city in Peru.

If convicted, the two face up to 60 days in jail and a fine of up to \$500. The civil charge carries a maximum fine of \$500, and the two commissioners could be assessed attorneys' fees if they are found to have violated the law. "All I'm guilty of is trying to help somebody," McKinnon told *The Orlando Sentinel*. (10/24/02–11/10/02)

**ACCESS
MEETINGS**

council member Shirley Gillins to discuss nominating another council member as council president.

Sands also is accused of having town clerk Rena Peterson contact Gillins and instruct Gillins to make the council president nomination.

The State Attorney's Office filed civil, not criminal, charges against Sands.

Prosecutors also filed a civil charge against Steve Richardson, a former custodian of records, for reportedly refusing to let two people inspect a public record.

Civil charges are punishable by a fine of up to \$500 and if the mayor is found to have violated the law, a judge also can assess attorneys' fees. (10/9/02)

AGO: Plans can be released for bidding

TALLAHASSEE—While Florida law now exempts building plans from public release, the government can disclose and distribute building plans as part of the competitive bid process, according to a recent Attorney General Advisory Legal Opinion.

Betsy S. Burden of the Northern Palm Beach County Improvement District requested the opinion from then-Attorney General Bob Butterworth.

The 2002 legislature amended the Public Records Law to exempt from disclosure all “building plans, blueprints, schematic drawings, and diagrams...” for state-owned or operated buildings. The statute allows agencies to release building information to people performing work on a building.

“The exemption does not prohibit the disclosure of this information; rather, the information is exempt from and not subject to the mandatory inspection requirements” of the Florida Public Records Law, Butterworth wrote. Government agencies can release the information to prospective bidders, but the prospective bidders in turn should keep the information exempt from public inspection, he wrote.

(AGO2002-74—11/4/02)

FDLE charges former state employee in public records scheme

TALLAHASSEE—The Florida Department of Law Enforcement has charged two men in connection with a scheme involving improper payment for public records.

Former state Department of Insurance (DOI) employee Jamie Glenn Payne has been charged with three counts of

Resident ordered to pay mayor’s attorney fees

WELAKA—The First District Court of Appeals affirmed an administrative judge’s ruling that a Welaka resident must pay \$9,000 in attorney fees to Mayor Gordon Sands.

Caron Speas filed an ethics complaint against Sands after a March 1999 election.

Speas said that the mayor ordered a town clerk to delay the release of public records and overcharged her for the records.

The state Commission on Ethics ruled in December 1999 that the complaint was

Democrats sue to get Bush records

TALLAHASSEE—The Florida Democratic Party sued Gov. Jeb Bush to get public records that the Democrats say Bush is refusing to release.

Bob Poe filed the lawsuit in Leon County Circuit Court. He reportedly made numerous public records requests including requests for appointment schedules, travel records and briefing materials. Poe also requested fiscal data, spending records, contract information and revenue projections.

Other records requested included communication with school superintendents on the class size

constitutional amendment and records of business dealings.

Bush spokeswoman Elizabeth Hirst said the governor’s office had already complied with several records requests and would fill all of the remaining records requests. “With the volume of public records requests received and the complexity of some of these requests, the gathering of information is a process that takes time,” Hirst told the *Tallahassee Democrat*. Within a few days of the lawsuit’s filing, Bush’s office began releasing some of the requested records. (10/12/02—10/17/02)

Paper files public records lawsuit against police

PENSACOLA—The *St. Petersburg Times* is suing the Pensacola Police Department to get information about weapons and training.

The *Times* requested public records from the department about how many military-issue weapons it owns, who carries the weapons and what training police officers have received on the weapons.

The paper is looking specifically at information on grenade launchers, automatic machine guns and rifles. The department’s SWAT team carries some of the weapons in question.

“The material we’re seeking is clearly public record,” said Rob Hooker, deputy managing editor of the *Times*.

The Pensacola Police Department has refused the request, citing exemptions on security information passed following the Sept. 11, 2001, terrorist attacks. City Attorney Rusty Wells argues that police surveillance techniques, procedures and security plans would be compromised if the records were released.

“The statutes are indeed to protect this kind of inventory and information from public record,” Wells told the *Pensacola NewsJournal*. (10/9/02—10/10/02)

unlawful compensation or reward for official behavior, and grand theft. His father-in-law, Theodore Charles Hale, was charged with grand theft and criminal conspiracy.

While working for the DOI, Payne improperly processed public records requests, having the requester pay his

father-in-law for the records, according to the FDLE. The payment Hale and Payne received for the public records is estimated to exceed \$20,000. If convicted, Hale could face a maximum of 20 years in prison and up to \$15,000 in fines. Payne, if convicted, could face a maximum of 25 years in prison and up to \$20,000 in fines. (10/24/02)

without merit.

It also ruled that Speas filed the complaint to hurt Sands reputation and knew some of the information in the complaint was false.

Sands filed a counter complaint, saying Speas damaged his reputation, and asked for reimbursement of his attorney’s fees.

An administrative judge ruled for Sands and determined the cost of the fees. The First District Court of Appeals filed a per curiam decision, affirming the administrative judge’s ruling. (10/16/02)

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.

Gulf Breeze facing six lawsuits over sale

GULF BREEZE—Six lawsuits were filed against a water authority formed by the cities of Gulf Breeze and Milton.

The Florida Water System Authority, created by the cities in September, was formed in order to purchase Florida Water System, a private company that controls water systems in 152 communities.

The lawsuits seek to stop the sale and allege in part that the authority's decision to buy the private company is

void because it violated the state's Open Meetings Law, which require the meetings be public and advanced notice be given. "The 'public hearing' failed to comply with basic procedural due process in that the affected 'public' was not given any reasonable notice, contrary to the Sunshine Law and the hearing was too distant from affected person, and, thus, the hearing was not 'public,'" according to one of the lawsuits. (10/23/02–11/22/02)

Investigation clears Crystal River officials

CRYSTAL RIVER—An investigation into the actions of some of the members of the Crystal River City Council revealed insufficient evidence to prove the state Sunshine Law was violated, according to the State Attorney's Office.

Council member Susan Kirk questioned eight instances involving fellow council members Kitty Ebert, John Kendall and Bonnie Taylor and Mayor Ron Kitchen. She wrote a letter to then-City Attorney Clark Stillwell, who did not want to bring the charges to the State

Attorney's Office. Kirk then filed a complaint directly with the State Attorney's Office.

Assistant State Attorney Mark Simpson investigated each of the eight claims. In a memo to the city, Simpson said there was conflicting testimony or a lack of corroboration in each of the eight incidents.

He also wrote that some of the incidents, even if corroborated, would not have been violations of the state Sunshine Law. (9/14/02–10/22/02)

Businessman sues four Cocoa Beach leaders

COCOA BEACH—Businessman Charles Hebert filed a lawsuit against the mayor and three city commissioners, claiming they violated the state's Open Meetings Law.

"In the last three or four years, I have come to believe that some of our commissioners were at times working outside of the Sunshine Law when making decisions that affect the city," Hebert said. "And I believe that some of them are taking directions from non-elected officials.

Mayor Janice Scott said there was no

conspiracy and no Open Meetings violations. In addition to Scott, commissioners Eric Fricker, Pat Davis and Tony Sasso were named in the lawsuit. The lawsuit, filed in Brevard County Circuit Court, said the officials violated the law when they met with City Attorney Skip Fowler and representatives from Cape Canaveral Hospital. According to the lawsuit, the meeting was not publicly advertised, no minutes were kept and the primary public entrance to the meeting room was locked. (9/26/02–10/5/02)

ACCESS RECORDS CONTINUED

City attorney agrees to pay newspaper's fees

PINELLAS PARK—The city attorney has agreed to pay the *St. Petersburg Times* \$1,500 in legal fees stemming from a public records dispute.

The *Times* sued the city last summer after officials failed to release personnel files and other documents. A judge ordered the city to release the records or release a statement explaining why the city believed the records shouldn't be

released.

City attorney Ed Foreman responded by saying the city had not refused to release the records and that he was in the process of reviewing the documents to determine if any of the information was exempt. Pinellas Park turned over the requested documents. Foreman has agreed to pay \$1,500 in court costs and lawyers' fees for the delay. (9/28/02)

Judge decides arts council is private

ORLANDO—The United Arts of Central Florida is a private entity and not subject to Florida's Public Records and Open Meetings laws, a judge ruled.

The arts group had operated as a private foundation but was challenged by one of its former committee members, Bruce McMenemy. (*Brechner Report*, August 2002) The executive committee chose to go to court to get a declaration of whether it is a public entity.

McMenemy argued that United Arts receives a third of its budget from state and local governments, which it then hands out in the form of grants. By acting as a distributor of public arts money, United Arts was playing the role of a public agency and should follow the state's open government laws, he argued. McMenemy also filed a lawsuit to force United Arts into operating in the Sunshine and to recover his court costs.

However, following a hearing on the request and the countersuit, Judge Joseph P. Baker of the Orange County Circuit ruled that United Arts is a private entity and does not have to operate in the Sunshine. "I don't see it," Baker said. "There is room for a great deal of debate on this. But I don't think it is an agency." (9/21/02)

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Winning series helps open records on bad doctors

Editor's Note: This is an edited excerpt of the acceptance speech of Geoffrey Gevalt, the managing editor of The Burlington Free Press and the editor of the paper's award-winning Code of Silence series.

The Burlington Free Press was thrilled to win this year's Joseph L. Brechner award. It was an unexpected surprise, an affirmation of our long-standing commitment to investigative work, to pushing as hard as we can to get at the truth. I want to acknowledge several people

The BackPage

By Geoffrey Gevalt

I can tell you that Stephen is a junkyard dog. And that is a high compliment. For those of you who have never encountered canines guarding a second-hand automotive parts establishment, I can tell you this: They are generally wiry and underfed; slightly mean but susceptible to kindness and absolutely unwavering in their hell-bent desire to sink their teeth into your thigh. Stephen qualifies admirably. And if I walk with a slight limp it is because I remain his editor.

I also want to thank two newsroom leaders: Former Free Press Editor Mickey Hirten and current editor Mike Townsend. Also, publisher Jim Carey and Metro Editor Ed Shamy. I have one final acknowledgment: Lois Tarczewski. It was the story of her death that brought to life a terrible problem in Vermont — that the state was not adequately disciplining bad doctors and that medical consumers had no way of knowing whether their doctors were any good.

This story came about because Stephen read a brief in a competitor's newspaper. That short story outlined how a doctor who had several charges against him was allowed to stay in practice. Stephen wanted to examine the record of the Vermont Board of Medical Practice and determine its record of enforcement. What he found was that it was very difficult to find out any information about doctors and enforcement. He also found out that not many doctors had been disciplined.

We decided early on to try to find one patient involving one doctor to try to show readers the scope of the problem.

The difficulties in finding that one patient were enormous. We only had general information on several disciplined doctors and



Geoffrey Gevalt

vague, one-sentence descriptions of the bad outcomes that had landed them in trouble in the first place. We had no names, no specifics; hospital records were confidential; medical practice board records were confidential; and no one in the medical community wanted to talk about these doctors or cases.

As we found out soon enough, even outside legal cases were often confidential because court records — or settlement agreements — were sealed.

Through great shoe-leather reporting, Stephen found the name of Lois Tarczewski and several others.

What then followed was an exhaustive search for documents, for information about the Medical Board, for knowledge about the system of regulation in Vermont and about the law. After nine months of work, the series was published.

Lois' story was this: She had slipped and injured herself at work. She went to the local surgeon who sent her down to Dartmouth-Hitchcock Medical Center for further tests. At Dartmouth, a highly competent surgeon saw her and recommended he operate on a portion of her spine.

Her hometown surgeon wanted to be the one to operate. He spoke with Lois, reassured her, convinced her to choose him instead. She relented. It was easier. It was closer to home. She didn't want to hurt his feelings.

Something went very wrong during the surgery. She was, for a time, a quadriplegic. She never regained full use of all her limbs. She lived for 10 years in incredible pain. And then she died. Had she known from the beginning that her doctor was inexperienced and had experienced bad outcomes before, her husband said, she would have gone elsewhere.

Stephen wrote several early drafts. We combed over every sentence, every fact. We had it reviewed by lawyers numerous times. In the end it was solid, and it stood the test of criticism.

Stephen followed by writing about another doctor who also had numerous patients with bad outcomes.

The State Legislature responded quickly. Efforts to reform the Medical Practice Board and to open up the public information gathered steam. Eventually the legislation sailed through the Legislature and was signed by the governor, a medical doctor.

Ultimately, our work had an impact on the state, on doctors and on medical consumers. It established that more information is better than less.