
THE BRECHNER REPORT

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Commissioners fail to properly notify public of meetings

WEEKI WACHEE—City commissioners in Weeki Wachee met three times without publicly advertising the meetings in local newspapers, as required by Florida's Sunshine Law, according to the *St. Petersburg Times*.

Public notices about the meetings

ACCESS MEETINGS

were posted inside the Weeki Wachee

Spring's tourist attraction, but could only be viewed by the park's paying guests. Notices were also placed in the park's administrative office, which is situated behind a fence and bushes without a sign indicating that it carries out city business.

Only one public member attended any of the meetings, a government attorney who heard about it from another lawyer. The *St. Petersburg Times* didn't receive a notice of the meetings, despite the fact it has a standing request with the Weeki Wachee city clerk to be contacted about public meetings.

"It slipped my mind," part-time clerk Jennifer Card said.

None of the city's business was recorded on tape and written minutes were not available. The city's failure to notify the public about its meetings has many citizens concerned.

"That's kind of the problem with what's going on," said George Angeliadis, attorney for a group of new city residents.

"You've got nine people in control of the city who are regulating some important issues," he said. "No, I don't think it's sufficient notice."

City Attorney Joe Mason said the city would take steps in the future to notify the *Times* of upcoming meetings.

(1/28/04)

Counties end online access to records

SARASOTA – In response to a revised order by the Florida Supreme Court, Manatee and Sarasota counties ended online access to court records.

The Court issued an order in February, calling for a moratorium to online access of court records. It attempted to clarify a November order for clerks who "overreacted" by shutting down their Web sites and for other clerks who did not restrict access enough, said First Amendment Foundation attorney Jon Kaney.

The order made it clear that clerks who were providing Internet access to court case documents must cease the practice. Clerks may only provide documents through a terminal in the clerk's office or in response to an e-mail request for a document.

In response, Sarasota County Clerk of Court Karen Rushing and Manatee

Local judges can release DCF records

TALLAHASSEE—The Florida Supreme Court ruled that local judges, in addition to courts in Tallahassee, can order the release of agency files.

The decision ruled in favor of the *South Florida Sun-Sentinel*, which had asked West Palm Beach County state officials to turn over documents in its investigation of a couple accused of child neglect. Newspaper attorneys argued the *Sun-Sentinel* should not have to travel to Tallahassee to obtain public documents housed in the Department of Children & Families (DCF) Palm Beach County office.

The seven-member court unanimously agreed that, "It seems that such inquiries could be conducted most efficiently in the county in which the records are maintained and the DCF personnel familiar with the records, as well as the interested parties, are located."

Attorneys for the state argued that

County Clerk of Court R. B. "Chips" Shore terminated Internet access to public records through their sites.

Karl Youngs, attorney for the Sarasota clerk's office, said they don't have the staff to respond to the number of

ACCESS RECORDS

requests they expect, based on the tens of thousands of pages viewed every day.

Shore, whose site gets an average of 3-million hits per month, said that his lawyers may challenge the order.

"We've got some attorneys up in Tallahassee we've been talking to and they're looking into it, but I just don't know what we can do," Shore said.

Manatee and Sarasota counties have been in the forefront of making court records available online for the public.

The order is in effect until a committee develops new rules for access to online court records, which is not set to happen before July 2005. (2/20/04)

giving local judges such discretion would cause disorder, forcing the state to post lawyers in all 67 counties at the public's expense. The *Sun-Sentinel* disagreed, saying that the state was making it too easy for government officials to hide documents.

"...It's one of the great victories for public records," David Bralow, general counsel for the newspaper, said. "It makes no sense to make people go to Tallahassee to get public records relating to kids in Miami or Palm Beach."

He added that, although the court's ruling only affects the DCF, it could become the basis for similar changes in other state agencies.

The newspaper was looking for documents on Donald and Amy Hutton, who have since agreed to 10 years of probation in return for having the charges against them reduced to four counts of child neglect. (2/8/04)

Commissioners withhold money due to lack of access

TAMPA – Hillsborough County commissioners voted to temporarily withhold \$1.3 million from the Hillsborough Area Regional Transit Authority (HART) because it rejected an auditor’s request to access records.

County Auditor Kathleen Mathews told commissioners that the authority twice refused her or her assistant access to review records at HARTline. She said that both times the visits coincided with HARTline board meetings and the organization refused access because officials who could help her were in the meeting.

“They’re pulling the records for us and putting them into a workroom for us, but if we can’t get into the building, we can’t look at those records,” Mathews said.

HARTline is an independent agency, but its books should be open to public inspections, according to an article in *The Tampa Tribune*. Record reviews are usually supervised which is why Mathews and her assistant were turned away when the supervisors were in a meeting.

“Well, I don’t think they understand the Public Records Law,” Mathews said. “They felt like one of their top people should be there.”

Following the commissioners’ vote to withhold the money, the organization designated additional people to assist auditors. This included employees who don’t usually attend board meetings with supervisors. (2/5/04)

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.

City initiates new open records policy following statewide audit outcomes

JACKSONVILLE – The city of Jacksonville developed a new open records policy after a newspaper audit revealed that city officials don’t always efficiently get public records to those who request them.

In January, reporters and other media employees from about 30 Florida newspapers posed as citizens at 234 local agencies in 62 Florida counties. They asked for records such as: 911 call logs from sheriff’s offices, city manager job reviews, county administrator e-mails and school superintendent cell phone bills.

The study revealed that 43 percent of the agencies audited made unlawful demands or refused to comply with records requests.

“In response to the articles, and while acknowledging a fragmented approach to handling public records requests, [Jacksonville] Mayor John Peyton wants to make the process easier,” Susan Wiles, Peyton’s chief of special initiatives and communications, said.

“Now, people who want to request records from the city can call 630-CITY and ask for the information,” Public Information Chief Dave Roman said. “Someone from the city’s public information office will respond to the request within one day and provide the information as soon as possible, usually

within five days.”

People seeking public records can go directly to the department that keeps the records or, if they don’t know where to go, they can call 630-CITY to make the request.

“If people don’t want to reveal their names, they don’t have to,” Roman said. “They’ll be given case numbers and can check on the status of their request by using the number.”

The Florida Public Records Law says the public can inspect any government document, unless it is specifically exempted. Gov. Bush agreed to study the audit and “if there are deficiencies in the system then we will look at it.”

Yet his office was the only state agency audited that didn’t comply with the law. The media volunteer was told to give her name and address, in addition to filling out or signing a written request form. A Bush spokeswoman denied that the governor’s office violated the law and suggested that the volunteer misunderstood what she was told.

“The results were disappointing for a state that prides itself on being a leader in open government,” State Attorney Charlie Crist said. “My hope is that once the results of the audit become known, this will become an educational opportunity.” (2/11/04)

Court overturns ruling, seals grand jury transcripts in Aisenberg trial

TAMPA – The 11th Circuit Court of Appeals overturned a district judge’s order to unseal grand jury transcripts in the prosecution of Steven and Marlene Aisenberg.

The court claimed that U.S. District Judge Steven D. Merryday abused his discretion in his decision to unseal the records.

It also reduced the \$2.9-million award given to the Aisenbergs’ attorneys for legal fees to \$1.5 million.

The court rejected the portion of Merryday’s ruling that unsealed the secret grand jury transcripts so the public could learn the facts about the failed prosecution against the Aisenbergs, who were on trial for the 1997 disappearance of their baby daughter, Sabrina.

“Given that the government’s conduct already has been revealed and publicly aired, the district court erred in concluding that the grand jury transcripts must be disclosed so that the public can know about this misdirected prosecution,” the court wrote in an opinion. “The public already knows.”

The Aisenberg’s attorney Barry Cohen said that he will consider an appeal after reading the ruling.

“[The ruling] totally interferes with the public’s right to know and there was no good legal basis to maintain the secrecy of the grand jury in this case,” he said. “We will live with the consequences of this case; I just think it’s unfortunate because the effect of it is not going to be in the public interest.” (2/7/04)

Court grants Express access to social security numbers under new exemption

ORANGE PARK – A circuit court ruled that Express Track Data, a data aggregator who gathers information from public records and sells access to commercial customers, is entitled to access the social security numbers collected by the town of Orange Park, under the state’s new social security number exemption.

The court also found the town had provided Attorney General Charlie Crist with inaccurate information when obtaining his opinion to support its decision to withhold the information.

In January 2003, Express sent a public records request to Orange Park, asking for information concerning the town’s residential and commercial water, sewer and garbage customers. These records included the social security numbers the town collected from its water and sewer customers.

Orange Park denied the request, citing Section 119.0721 which provides a partial exemption of social security numbers from the Public Records Law. In April 2003, the town requested an opinion from Crist, asking whether Express fell within

the legitimate business purpose exemption.

In its request Orange Park said, “Express operates a website whereby the general public can purchase access to a database in exchange for a fee.” It added that “Express is engaged in the bulk sale of social security numbers to the general public.” Crist relied on this information when he issued AGO 03-23, supporting Orange Park.

Later, the court evidence established that “the general public cannot access information on Express’s website” and “Express is not engaged in the bulk sale of social security numbers,” according to the reported summary judgment.

Furthermore, it clarified that Section 119.0721 was established to prevent fraud, identity theft and invasion of privacy. In this case, the exemption was “not intended to prevent data aggregators from receiving records which include social security numbers.”

Following the ruling, the Attorney General’s Office removed all references to Express in AGO 03-23. (1/20/04)

Clear Channel adopts “zero tolerance” policy for indecency, fires radio host

WASHINGTON – Facing a \$755,000 fine, Clear Channel Communications fired Bubba the Love Sponge Clem and announced its new “zero tolerance” policy for indecency.

According to industry publication *Radio & Records*, the

broadcaster also suspended the airing of shock jock Howard Stern’s syndicated morning show.

Clear Channel said that the decisions are consistent with its new policy.

“If a DJ is found to be in violation of FCC rules, there will be no appeals and no intermediate steps,” Clear Channel Radio executive John Hogan said. “If they break the law by broadcasting indecent material, they will not work for Clear Channel.”

In February, the Federal Communications Commission (FCC) proposed a \$755,000 fine against Clear Channel for airing a sexually explicit radio show on four stations. The stations, which were all in Florida, aired Bubba the

Love Sponge, the notoriously nasty morning show on radio station WXTB, 97.9 FM. The commission proposed fining \$27,500 for each of the 26 episodes

that were aired. Clear Channel was fined an additional \$40,000 for station record-keeping violations, which it can pay or appeal within 30 days.

Following the FCC’s proposed fine, Clear Channel called for the agency to convene industry-wide “Local Values Task Forces” to develop clear guidelines on what was or wasn’t appropriate language.

“Clear Channel is serious about helping address the rising tide of indecency on the airwaves,” President Mark Mays said. “As broadcast licensees, we are fully responsible for what our stations air, and we intend to make sure all our DJs and programmers understand what is and what is not appropriate.”

(2/26/04)

YachtBroker.com wins defamation suit

TAMPA – A federal court jury in the U.S. District Court Middle District of Florida found in favor of YachtBroker.com in its lawsuit against YachtWorld.com. The jury awarded the organization compensatory and punitive damages for the defamatory statements published on YachtWorld.com’s Web site, which claimed that YachtBroker.com trespassed on its site.

“This verdict is a big win for YachtBroker.com and for Internet commerce,” said G. Donovan Conwell, head of Fowler White Boggs Banker’s Technology Group, who represented YachtBroker.com. “This was one of the key battles over who owns information posted on the website – and this jury understood that it belongs to whoever created or authored it, not to whoever happens to post it on a website.”

The first lawsuit issue involved YachtBroker.com’s search engine, BoatRover, which allowed brokers and guests to look for yachts posted on various online sites. The second issue was about YachtBroker.com’s Valet Service, which eased the process of listing yachts on multiple Web sites.

YachtBroker.com claimed that YachtWorld.com published false statements that YachtBroker.com’s actions were illegal. During the trial, YachtBroker.com successfully defended its technologies, showing that the yacht listings belonged to the listing yacht brokers, not YachtWorld.com. (1/23/04)

INDECENCY

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Evidence abounds: Public records are public treasures

The annual “Sunshine Sunday” array of articles and editorials by newspapers statewide recently spotlighted the value of public records in Florida.

But the benefits of public records shine daily in print, online and on the air.

In fact, it’s harder to find a story that *doesn’t* use a public record than one that does. Eliminate every news

**The
Back Page**

By Joe Adams

report triggered or enhanced by a public record and Floridians would face huge gaps in news coverage.

Worse yet, huge holes would exist in the public consciousness regarding important issues.

For instance, without public records, the public would lack information to question a criminal justice system that repeatedly gave breaks and second chances to the suspect in 11-year-old Carlie Brucia’s abduction and death in Sarasota.

Without public records, readers wouldn’t have read Fred Schulte’s “Drugging the Poor” series in the *South Florida Sun-Sentinel*. The series revealed state flaws that allowed dozens of doctors to prescribe dangerous drugs at taxpayer expense, despite patients who died from overdoses and instances where the doctors faced drug or misconduct charges.

Without public records, readers would have missed “Justice Withheld,” a series by *The Miami Herald*’s Manny Garcia and Jason Grotto that uncovered how nearly one of every four men prosecuted during the last decade for sex crimes against Florida children had their convictions wiped clean by judges and prosecutors.

All three reports inspired action. State lawmakers called for hearings to explore why Carlie’s accused killer evaded custody despite several probation violations. The prescription stories spawned the Senate Select Subcommittee on Medicaid Prescription Drug Over-Prescribing, and several doctors named in the series later faced disciplinary actions or criminal charges. A week after *The Herald* series, lawmakers crafted legislation to curb the use of withhold of adjudication, a legal break that allows offenders who plead to a crime to avoid a felony conviction.

But records-generated stories don’t have to be multi-day blockbusters or move state lawmakers to aid the public.

Every story based on records – such as a meeting agenda,



Joe Adams

budget, lawsuit, police report, foreclosure, building permit or government study or report – can help people digest, follow and analyze important community developments and trends. For more examples, see story postings from around the state on my Web site at www.idiganswers.com. Even as news stories are excellent tools for teaching and learning about the value of public information, public records access isn’t foremost about the press.

It’s about the public.

Important life decisions hinge on what we know. From buying property and checking criminal backgrounds to selecting a school and researching a doctor, public records offer crucial insights for informed choices about our families, businesses, government and ourselves.

How many sexual predators and offenders live near me? Is that charity worthy of my donation? How are my tax dollars being spent? People can answer those and many other questions through public documents. Those opportunities fade, however, when lawmakers approve unjustified exemptions and when custodians of public records place barriers before public access.

A recent audit on public records access statewide by 30 newspapers indicated public records aren’t nearly as public as they should be. The newspapers sent anonymous representatives to various public offices for public documents. Only 57 percent of the public officials complied with requests as the law required. Many wanted to know the intentions of the records seeker – which the law doesn’t require be shared. A *Sarasota Herald-Tribune* requester nearly got arrested after asking for the local school superintendent’s cell phone records.

Too many public officials hesitate to comply with records requests out of unfamiliarity with the law. More education is essential. Fortunately, the evidence abounds: Public records are public treasures.

Lawmakers should remember it when pondering proposed records exemptions in this legislative session and those to come.

Joe Adams, an editorial writer at The Florida Times-Union, is author of The Florida Public Records Handbook published by the First Amendment Foundation. His Web site, www.idiganswers.com, focuses on Florida public records use and open government news.