

# THE BRECHNER REPORT

Volume 29, Number 2 ■ 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  
February 2005

## Officials may not charge royalties for public records

LAKELAND—Public officials cannot copyright maps their office created and then charge royalties for the documents, according to a ruling by the 2<sup>nd</sup> District Court of Appeals.

The decision, which came in the case *MicroDecisions, Inc. v. Skinner*, said that public officials in Florida have no right to copyright public records unless they are given specific statutory permission by the state legislature.

In the case, *MicroDecisions*, an Orlando-based real estate data vendor, sued the Collier County Property Appraiser when he demanded that the company pay royalties to the office.

County Property Appraiser Abe Skinner wanted to collect money from companies that used any public maps in connection with a commercial enterprise.

The court disagreed, saying that a requestor's purpose for using the records did not matter under Florida's Public Records Law and did not affect his right to access the records.

"Since 1905, it has been clear that public records may be used in commercial, profit-making business," the court stated.

## Madeira Beach officials cleared of open meetings violation

MADEIRA BEACH—The mayor and two city commissioners did not violate Florida's Sunshine Law, according to a memo from the Pinellas-Pasco State Attorney's Office.

Former Madeira Beach Commissioner Roger Koske filed a complaint in mid-October against the three officials based on a series of private meetings that he believed violated the state's open meetings law.

### ACCESS MEETINGS

## DCF must release foster-care records to Florida State Advocacy Council

TALLAHASSEE—The 2<sup>nd</sup> District Court of Appeals ordered the Department of Children & Family Services (DCF) to release records of several foster children to an advocacy group.

The ruling was a victory for the Florida Statewide Advocacy Council (FSAC), which wanted access to DCF's records so it could investigate complaints against the agency.

"Both FSAC and [affiliated local groups] are statutorily authorized to have 'access to all client records, files and reports from any program, service or facility that is operated, funded or contracted by any state agency that

### ACCESS RECORDS

provides client services," wrote the three-judge panel, citing Sections 402.165(8)(a)(2) and 402.166(8)(a)(1) of the Florida Statutes.

In 2003, the Advocacy Council released a report showing that half of the 1,180 foster children whose records they reviewed were on mood-altering drugs. DCF officials disputed the report and later began denying the Advocacy Council's requests for client records, according to *The Miami Herald*.

Circuit Judge James Hall Seals of Lee County ordered DCF to turn over the files. The agency refused, citing confidentiality, and appealed the order.

## Tax-record access provision withdrawn

WASHINGTON—Congress voted to kill legislation that would have made it easier for legislators and their aides to review income tax returns submitted by the public to the Internal Revenue Service.

The House of Representatives unanimously decided to withdraw the section on access to tax records, which had been included in a

domestic-spending bill.

The tax-access provision had been previously approved by both the Senate and House in their November legislative sessions.

The removal of the tax language will allow legislators to send the remaining portion of the approved spending bill to President George W. Bush for his signature.

### PRIVACY

## Church asks FCC to revoke licenses

WASHINGTON – The United Church of Christ wants the federal government to deny license renewal for two Florida television stations that refused to run church advertisements.

The Miami affiliates, WFOR-TV and WTVJ-TV, are owned and operated by CBS and NBC, respectively.

“We feel this is a breach of their obligation to serve the public interest,” said the Rev. John H. Thomas, president of the church.

The advertisements addressed the church’s policy of accepting members regardless of race or sexual orientation.

They show people of different races, including two men holding hands, being blocked from entering a church service. The ads then discuss the openness and acceptance that church-goers will find at the United Church of Christ, which is a Protestant denomination with more than 1.3 million members.

The local television stations claimed the advertisements amounted to issue advocacy.

In addition, the stations’ parent companies stated that the ads were too controversial to run on their stations.

The church has complained that the broadcast outlets have failed to provide suitable access to the public airwaves, which prohibits the church from reaching an audience not served by cable television.

Several other television stations, including some network affiliates and cable stations, have allowed the commercials to be broadcast.

## 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.*

## Clearwater libraries relinquish federal technology grants that require filters

CLEARWATER – The Clearwater city library system will lose \$9,000 in federal funds because library directors have chosen not to install Internet filters on library computers.

Under the Federal Communications Commission’s e-rate program, libraries can receive funding to offset the cost of telecommunications expenses if they agree to install monitoring software.

Executive Director John Szabo said the city doesn’t restrict Internet access because the library has not experienced any problems with the content that users are accessing.

“The issue that typically causes a public library to implement filtering has not been an issue in Clearwater,” he said.

The software restricts the viewing of

Web sites that contain obscene and pornographic materials. In addition to restricting access to both objectionable and non-objectionable content, the filters may provide a false sense of security, said Emily Sheketoff, executive director for the American Library Association.

Rep. Dennis Baxley, R.-Ocala, introduced a bill last year in the Florida legislature that would have required public libraries to use filters.

Although the bill did not pass, he said he plans to reintroduce the legislation during this spring’s legislative session.

“I wish the bill wasn’t necessary,” Baxley said. “I’m just looking for common decency here.”

## Student body reprimands FAU adviser

BOCA RATON – The Florida Atlantic University newspaper staff triumphed over their adviser in a clash between censorship and the First Amendment.

The university’s student government will issue a written reprimand to newspaper adviser Michael Koretzky for violating the rules established for the selection of editors.

The newspaper students asked the student government to fine and suspend

the adviser for failing to follow the guidelines.

Although the student government’s penalty was more lenient than the students requested, Koretzky said he believes he may not be re-hired after his one-year contract expires this month.

The student government also voted 11-0 to support a statement saying there was never an intent to suppress the newspaper’s First Amendment rights.

## Citizen endeavors to capture Florida Sunshine in open meetings movie

FLAGLER BEACH – After standing silently at the back of the Flagler Beach City Commission’s meetings for more than nine months, Dan Bayerl has decided to turn the proceedings into a movie.

“If [the citizens] see what’s being done in their name, they’ll be just as appalled as I am,” said the 10-year resident of the city.

Bayerl said the state’s Sunshine Law empowered him to complete the first portion of his project by allowing

him access to the meetings. He arrived at the first meeting with a copy of the law in his hand and

## ACCESS MEETINGS

anticipated his presence would change the tone of the meetings.

“I thought if I brought a camera in, I thought they would behave,” he said. “But, it hasn’t made a difference.”

To the Commission’s credit, Bayerl said no one has attempted to stop his taping.

Bayerl plans to debut the film at a local business but is not sure how he will distribute it.

# INDECENCY

## Four letters spell end for radio personality

TAMPA –Disc Jockey Norwood Orrick, a volunteer programmer for WMNF-FM, was suspended from the air in late 2004 for airing indecent content.

Station managers said they believe he intentionally tested the Federal Communications Commission by airing a song containing a four-letter word during his weekly 4 a.m. to 6 a.m. shift.

The FCC regulates the broadcast airwaves and has prohibited the airing of certain obscene and profane words. A station in violation of the FCC's broadcast decency standards can be subject to fines and license revocation.

"What Norwood fails to understand is our rules are different from the FCC," said Program Director Randy Wynne. "If he wants to push the FCC, he should check with the station ahead of time because it is our licenses that are at risk."

## Federal legislation aims to protect media's use of confidential sources

WASHINGTON – A bill introduced in the U.S. Congress aims to provide a shield for journalists who attempt to protect their confidential sources.

The legislation, proposed in late November by Sen. Christopher J. Dodd, D-Conn., would give reporters the right not to divulge their sources.

Although 31 states and the District of Columbia have shield laws that protect journalists who refuse to reveal the names of confidential sources, no federal law exists to provide the same privilege in federal courts.

Dodd's bill follows a number of high-profile attempts to force journalists to reveal their sources. Journalists who refuse often face large

fines and jail time.

In late 2004, U.S. District Judge Ernest C. Torres convicted television reporter Jim Taricani of criminal contempt after he refused to release the source of an FBI videotape about government corruption in Providence, R.I.

Taricani was sentenced to six months house arrest because he refused to cooperate with the special prosecutor appointed to investigate.

Under the proposed law, the federal courts, legislature and executive branch would not be allowed to compel journalists to provide the source of information.

The bill has no requirement that the source be promised confidentiality by the reporter to qualify for the shield.

## SHIELD LAWS

## ACCESS RECORDS CONTINUED

### School district officials lack knowledge of Public Records Law

OSCEOLA COUNTY – State Attorney Lawson Lamar recently recommended that Osceola County School District employees receive training to allow them to better comply with the state's Public Records Law.

His letter follows an investigation by the Orange Osceola State Attorney's

Office into allegations that school officials had violated the law by denying access to public records.

Earlier in 2004, District 2 School Board candidate Debbie Wemette requested access to a number of maintenance records. School officials did not immediately release the records to

Wemette based on the volume of information sought.

The records sought contained information about the inspection of portable classrooms used by the school district. After an investigation, the State Attorney's Office concluded that the records should have been released.

## ACCESS MEETINGS CONTINUED

### Builder sues Jax Beach officials, claims Commission broke Sunshine Law

JACKSONVILLE BEACH – A Jacksonville area developer is asking a circuit court judge to allow the construction of oceanfront condominiums over the objection of the city's planning commission.

The developer, Chris Hionides of The Atlantis of Jacksonville Beach, claims that members of the commission privately discussed the development before a public hearing in late October, where it declined Hionides' request.

Because he does not believe he will get a fair hearing, Hionides has asked

Circuit Judge Jack M. Schemer to enter an order granting the applications Hionides needs to continue building his 52-unit condominium development.

Hionides asserts that the Planning Commission met in secret, using only information from his adversary, to deny his application, which he believes violated Florida's Sunshine Law.

Under the state Open Meetings Law, if two or more members of an elected body discuss business that will come before the body, the meeting must take place in public.

## THE BRECHNER REPORT

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

Sandra F. Chance, J.D., Exec. Director/Exec. Editor  
Amy Sanders, Editor  
Alana Kollfrath, Production Coordinator  
Amanda Groover, Production Assistant  
AnaKlara Hering, Production Assistant  
Alex Sarria, 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.

---

## Media, citizens would benefit from electronic court records

Under Chief Justice Barbara Pariente's guidance, the Florida Supreme Court is moving toward an entirely

### The Back Page

By Carol LoCicero

paperless court system. The Court also has directed its Committee on Privacy & Court Records to make



Carol LoCicero

recommendations about

what public court records should be accessible over the Internet. Those recommendations will have far-reaching impact on our ability to oversee our court system – especially when electronic records are the only records available.

In November, this committee took public testimony from those who wished to express opinions on electronic access. The Media & Communications Law Committee of The Florida Bar was invited to participate.

The Bar committee is composed of lawyers from throughout Florida. Many of the members represent news organizations. The members deeply believe that online access to court records will result in better journalism and foster public understanding of our court system. The committee's fundamental position is that electronic access should parallel at-the-counter access to paper records. Today, most court records are available just for the asking. This system has worked well for decades.

Searching paper records, though, is somewhat of an ordeal. Paper access is available only when the Clerk's Office is open, typically between 9 a.m. and 5 p.m. Many people who would like to review court records work during those hours. Much reporting is conducted outside those hours, too. Paper access also involves geographic limitations. It is difficult for people to visit the courthouse personally, particularly the elderly and the disabled. Internet access eliminates these barriers.

Timely examination of court records is an indispensable part of the journalist's craft. Electronic access will allow greater accuracy and more complete reporting. This is true not only for long-term projects, but also for daily reporting on deadline. A reporter may have to abandon pursuing additional information about a youth counselor accused of abusing children if verification requires him to spend the entire day traveling and culling through court files. Such obstructions disappear with electronic access.

Ordinary citizens would also reap the added benefit of direct

access to the source of reported information. Recent headlines provide ample illustration of this point. Tiny bloggers were the first to challenge the authenticity of the military records used in CBS' 60 Minutes II piece challenging President Bush's National Guard service. Such immediate debate and accountability leads to greater accuracy and better journalism.

Florida has a good history of access to paper records upon which to draw. Mistakes occur in a minute percentage of cases, but they do not overshadow the good work that occurs daily in Florida courthouses. The proven paper model should be applied to electronic access. Both the press and the public will reap great benefits from this investment in broader access.

This state has traditionally served as a model for open government. Twenty-five years ago, the Florida Supreme Court embraced cameras in the courtroom. For more than a decade, the Florida Constitution has provided that everyone has the right to "inspect and copy" judicial records. Today, oral arguments before the Florida Supreme Court are webcast live. Remote access to computer records is the appropriate next step in Florida's progress toward a more open, accountable government.

That is not to say that there are not legitimate, but limited, privacy and identity theft concerns to be addressed. However, privacy concerns arise in a limited number of cases and can generally be resolved by a judge at the request of an affected person. Sealed court records should be rare. Identity theft can be prevented by limited redactions of information such as social security numbers and financial account numbers, or by allowing litigants to omit such information from their court papers. Still, the Supreme Court committee should not break stride in quickly facilitating electronic access to the vast bulk of court records.

That committee has a July 1, 2005, deadline for making recommendations to the Court. The Media & Communications Law Committee will continue to monitor and participate in the process. The media should too.

---

*Carol LoCicero is a partner with Holland & Knight LLP and a member of the firm's national media team. She is located in the firm's Tampa office. Carol chaired the Electronic Access Subcommittee of The Media & Communications Law Committee.*