
THE BRECHNER REPORT

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FOI Summit celebrates anniversary, draws experts

GAINESVILLE – The 2007 Florida FOI Summit, Sept. 20-21, 2007, will bring together access advocates, government officials, media lawyers, journalists, educators, citizens and students to discuss the latest issues and developments in freedom of information in Florida, the nation and the world.

More than a dozen speakers including Florida's Governor Charlie Crist (invited) and Florida Attorney General Bill McCollum will be present. Ken Paulson, editor of *USA Today*, will kick off the conference.

FOI experts, including award-winning journalists, media lawyers and access advocates, will give advice on utilizing public records in day-to-day reporting.

Participants will have an opportunity to explore ways to work effectively with legislators on open government issues.

The Summit is sponsored by The Brechner Center for Freedom of Information, located in the College of Journalism and Communications at the University of Florida.

As part of the Summit, the Center will celebrate its 30th anniversary, the

induction of a new class into the Florida Freedom of Information Hall of Fame, and the presentation of the Brechner Center for Freedom of Information's 22nd Annual FOI award.

The conference will also include recognition of the top 30 freedom of information stories published in Florida in the past 30 years.

The cost of the conference is being underwritten by a grant from Mrs. Marion Brechner.

Registration information is available at www.brechner.org.

Florida Supreme Court approves experimental electronic records program in Manatee County

MANATEE COUNTY – The Manatee County Clerk of Court launched a one-year pilot program in public access to paperless court records.

The Florida Supreme Court, which halted all other electronic access initiatives in the state because of privacy concerns, granted Manatee County a "modified limited moratorium," allowing it to serve as the testing ground for public access to electronic court records.

Manatee Clerk of Court R.B. "Chips"

Shore said the program is intended to demonstrate to the Court and skeptics that it is possible to protect confidential information while opening court records to public scrutiny through online convenience.

"I need the public to be involved to test the system so we can report to the Court what works and what doesn't. This needs to work for the public because these

are their records," Shore said.

The program will provide experimental electronic access to court records through its Web site in order to gather information for the court so it can develop rules for access based on real data.

Shore said he hopes Manatee County's pilot program will be the basis for the rest of the state to open up their records. More information about the pilot program is available at www.manateeclerk.com.

ACCESS
RECORDS

Missing toddler's file made public for 'good cause'

ST. PETERSBURG – The child-welfare records of a 2-year-old girl whose disappearance from a Lake County foster home went unreported for months were released after a Pinellas Circuit judge found "good cause" to open them to the public.

The 900-page case file of Courtney Clark was released by Chief Judge David Demers after the *St. Petersburg Times* and *The Tampa Tribune* asked the court to make the records available to the public.

The Department of Children and Families said it supported the release

of the records in order to show that the agency is being "transparent" and working to make sure this incident is not repeated.

Courtney's disappearance triggered a nationwide hunt for her. Courtney was found in June in Portage, Wis., in a home where an 11-year-old boy had been held captive and tortured. The boy's mother had been buried in the backyard.

According to a report by the DCF

inspector general's office, some individuals "should be held accountable" for mistakes, but the ultimate failure was attributed to "poorly established protocols within the provisions of the contract, lack of proper oversight, weak internal controls, and ineffective communication by all parties involved."

DCF announced it will hire five missing-children caseworkers. The Department also plans to form a committee to study problems within the foster care system.

ACCESS
COURTS

State agency launches paperless program for consumer disputes

TALLAHASSEE – For one year, the Department of Financial Services has been routinely destroying records of consumer disputes with insurance companies.

Although the law does not require the agency to save the civil remedy notices, Florida Chief Financial Officer Alex Sink halted the practice until she could determine whether the documents were critical to tracking industry practices.

In response to complaints by attorneys about the destruction of public records, Sink has launched a system to electronically track lawsuits against insurance companies.

“Our goal is to make it easier for regulators to know what’s going on in the marketplace, (and) also the public,” said

Sink’s spokeswoman, Tara Klimek.

Sink’s office plans to use the electronic database to track trends and to alert regulators when potential problems appear with certain businesses.

Florida law requires consumers to file the civil remedy notices of their intent to sue their insurers, giving companies 60 days to settle before the cases proceed to court. About 10,000 such notices are filed each year.

The files often include detailed explanations of the disputes, court pleadings and insurance company responses.

As part of the revised program, the Department of Financial Services also will stop collecting thousands of pages of litigation details it did not need.

Officials cleared of wrongdoing

OSCEOLA COUNTY – A state attorney’s investigation cleared Osceola County School Board members of two complaints by the public of possible Sunshine Law violations.

The three board members targeted in the inquiry, John McKay, David Stone and Tom Greer, said no violations occurred.

Two of them accused fellow board member Jay Wheeler of instigating the allegations. Both the residents who filed the complaints pointed to Wheeler as the source for their information.

“It’s a sad day when an elected school board member like Mr. Wheeler abuses the Sunshine Law in an effort to discredit the school district and the school board when all he had to [do] was ask for a clarification while we were in our meeting,” McKay said.

COURTS

ABA discards proposal to seal some criminal records

SAN FRANCISCO – The American Bar Association has abandoned consideration of a proposal that called for making certain arrest and court records closed to the public.

Sponsors of the proposal argued that public access to court records has contributed to employment and housing discrimination against applicants who were arrested but never convicted of crimes or who have completed jail sentences.

The proposal was supposed to be considered at the ABA’s annual meeting in August, but it was withdrawn after widespread criticism from media, business and other groups, said George Washington

University law professor Stephen Saltzburg, a sponsor.

“For now we threw in the towel,” Saltzburg said. “People agree there’s a problem. Everyone agrees there’s unfairness. But we don’t have a solution that gets people saying that’s one we can all support.”

Saltzburg is co-chairman of the ABA’s Commission on Effective Criminal Sanctions. He said the panel spent two years looking at ways “to improve the chances of people who have criminal records getting jobs and balancing re-entry versus safety.”

The proposal called for governments to seal the records of people who

were arrested but never convicted, or whose convictions were later set aside. Misdemeanors and felony records would be sealed after an undefined period of law-abiding conduct. However, violent crimes and large-scale drug trafficking remain public record.

Opponents to the proposal said limiting public access to records would make it harder to expose misconduct by police and prosecutors.

“We’ve always said that if discrimination is the problem, then directly address the problem, don’t try to hide reality or hide the historical record,” said Lucy Dalglish, executive director of the Reporters Committee for Freedom of the Press.

FREEDOM OF INFORMATION

Oldest FOIA requests collecting dust for two decades

WASHINGTON, D.C. – The oldest pending Freedom of Information request has been awaiting a response for 20 years, and 16 other requesters have been waiting more than 15 years for results, according to a survey by the National Security Archive of 87 agencies and departments.

The survey found the State Department was the worst offender with the most

pending requests over 15 years old.

Ten agencies misreported their oldest pending FOIA requests to Congress in their fiscal 2006 Annual FOIA Reports.

Several agencies contradicted their own responses to the Archive’s two previous “10 oldest” audits by reporting requests in the current survey that were significantly older than those they

admitted to in 2003 and 2005.

After the Archive reported the delays, Congress passed legislation to strengthen FOIA, including requiring tracking numbers for FOIA requests.

The report, called the Knight Open Government Survey, is available at http://www.gwu.edu/~nsarchiv/tenoldest/ten_oldest_report.pdf.

Students protest flag ban, threatened with expulsion

INTERLACHEN – Almost 20 students at Interlachen High School protested their school's policy banning the display of the Confederate flag by hanging the flag from their vehicles in the school parking lot.

The students were responding to an earlier incident in which Justin Suggs, a 17-year-old IHS senior, was ordered to

remove the Confederate flag from his car by Putnam County Superintendent of Schools David Buckles. The student was threatened with suspension and complied.

IHS Dean Andrew Burnett told students the reason for the ban was Buckles' concern that motorists driving on the road running adjacent to the

school might be offended by the battle flags. Students were ordered to remove the flags.

"The next person he saw with a flag, including the American flag, could be expelled and/or lose parking privileges," Suggs told the *Palatka Daily News* after the 20-student protest ended with compliance to the dean's order.

Flag mutilation arrests persist, despite Court's ruling

TAMPA – A Tampa man spent three nights in jail after rubbing a U.S. flag across his body, stomping on it, and dragging it down the street.

Donnie James White was charged with flag mutilation, a first-degree misdemeanor in Florida.

The crime carries a punishment of up to one year in jail and a maximum \$1,000 fine even though the U.S. Supreme Court invalidated laws banning flag desecration in 1989.

Florida never purged the law after it

was found unconstitutional 18 years ago.

"The U.S. Supreme Court has made it clear that this type of statute is unconstitutional. This defendant's conduct is protected under the First Amendment," said Assistant State Attorney Pat Bondi.

The charges against White were dropped, but he is the third person in the past two years to be charged with flag mutilation by Tampa police.

Tod Redman Steward was arrested twice by Tampa police last fall after he

burned American flags in front of the federal courthouse.

The Tampa police spokeswoman, Laura McElroy, told the *St. Petersburg Times* that the agency will seek to get the flag mutilation charge expunged from White's record and will alert officers that the law is unenforceable.

A spokesman from the Florida Secretary of State's office said the only way to remove unconstitutional language, like the law banning flag mutilation, from Florida statutes is through the legislative process.

Prosecutors drop Sunshine charges against mayors

KEY WEST – Prosecutors will not pursue charges against the Key West and Monroe County mayors after allegations that they violated the state open government law when they privately discussed a way to raise more tax money to build affordable housing.

County Mayor Mario Di Gennaro and Key West Mayor Morgan McPherson came up with an idea to increase the county's bed tax, but they never

discussed it in a public meeting. Then they pitched it to at least two House representatives. Both mayors serve on the Tourist Development Council, which advises the County Commission and is subject to open meetings laws.

But prosecutors said the mayors' behind-the-scenes negotiations did not constitute a Sunshine Law violation because the council only makes recommendations.

However, the Florida Attorney General's Office has ruled in several cases that advisory boards are subject to

the same open government laws that apply to elected boards, even if such boards have no authority to pass legislation.

Nonetheless, State Attorney General Mark Kohl said he didn't believe the mayors broke the law when they discussed privately an item that could eventually come before the TDC board.

Kohl made the statement the same day he dropped Sunshine Law civil infractions in another case in which Di Gennaro and County Commissioner Sonny McCoy admitted an off-the-record conversation about the board electing Di Gennaro as its next mayor.

ACCESS MEETINGS

Melbourne televises meetings

MELBOURNE – The Melbourne City Council began airing its bi-monthly meetings on public television in June.

Melbourne joined the county government and four other Brevard cities, which already air their council meetings on the Space Coast Government Television channel.

The Viera-based channel broadcasts gavel-to-gavel meetings around the clock to about 180,000 households, free of charge. The city council earmarked \$900 per meeting to hire a private video

production company for four hours of coverage with additional funding if meetings run overtime.

The city rejected the option of buying its own equipment, which would have cost \$55,000. Hiring a videographer would have cost an additional \$37,000 per year.

Each meeting will be re-broadcast at least six times each month.

"I think it's a matter of prioritizing. And I think it's a priority for us as a council to communicate to our residents," said Councilwoman Joanne Corby.

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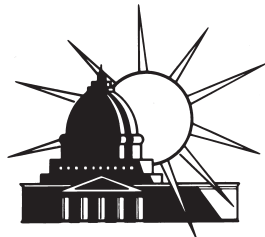
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Governor's office strives to bring state into the Sunshine

Florida enjoys a long history of open government. Citizens and lawmakers alike have fought to keep state and local government actions accessible to the public. Citizens deserve to have public officials and governmental bodies that are beyond reproach. This transparency builds trust in leadership, just as secrecy builds distrust. Florida's broad interpretation of open government ensures that government agencies operate in the sunshine.

Governor Charlie Crist's dedication to the Sunshine Law dates back to his early experiences in high school and college student government. Florida's 44th governor made open government a top priority in his inaugural address. He quoted President Abraham Lincoln, pledging that under his watch Florida government would be "of the people, by the people and for the people." On his second day in office, Governor Crist acted on his promise by creating the Office of Open Government. The office

falls under Executive Order 07-01, which states in part:

"The Office of Open Government is charged with providing the Office of the Governor and each of the

executive agencies under my purview with the guidance and tools to serve Florida with integrity and transparency.

"To that end, the Office's primary functions will be: (1) to assure full and expeditious compliance with Florida's open government and public records laws, and (2) to provide training to all executive agencies under my purview on transparency and accountability. The Office will also have primary responsibility for ensuring that the Office of the Governor complies with public records requests in an expeditious manner."

An immediate sense of interest and excitement grew as the news of this initiative spread. As director of the new office, my first task was to streamline the public record response process within the Governor's Executive Office. We started tracking the response time for Executive Office of the Governor document requests. We are often able to respond on the same day that the requestor contacts us.

In addition, the office created a public records contact list that includes 36 agencies and the State University System. Two contact persons are included for each office: a "main" and



JoAnn Carrin

"backup." At least one of these contacts is in the general counsel's office. We have listed the agency contacts on the Office of Open Government Web site. This list makes the public records request process easier and more efficient.

In addition to contacts, the Open Government Web site includes other helpful information on Florida's Sunshine Law and Public Records Act. This includes outside links to the latest Government-in-the-Sunshine Manual and Attorney General Office's Open Government Mediation Program. This information is

included so that the people of Florida may be fully aware of the information they have accessible to them.

In cooperation with the Florida Institute of Government, we provided free Sunshine Law training to 500 state agency managers in February. One month later, the Governor issued a proclamation to officially designate March 11 – 17, 2007 as Sunshine Week for the citizens of Florida. The Florida Society of Newspaper Editors traditionally sponsors Sunshine Week during the legislative session each spring. Events such as the Florida First Amendment Foundation's Sunshine Recognition Luncheon raised public records awareness among consumers, state agencies, and the media. We look forward to expanding and strengthening our partnerships with such organizations in the future.

The Governor reached even further into the sunlight in June when he issued Executive Order 07-107, creating the Commission on Open Government. The order charges the Commission to "review, evaluate, and issue recommendations concerning policies, statutes, and Article 1, Section 24 of the Florida Constitution, relating to the public's right of access to government meetings and records." The Commission will hold at least three public hearings around the state. The meeting schedule is listed on the Commission's Web site. They will report to the governor, the Senate president, and the speaker of the House of Representatives by Dec. 31, 2008. I encourage you to attend these meetings. Written recommendations are also helpful as the Commission begins their work.

JoAnn Carrin is the first director of the Office of Open Government. She served as the Attorney General's director of communications since 2003.