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# THE BRECHNER REPORT

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## Mental hospital investigation reveals secrecy

TALLAHASSEE – A yearlong investigation by two newspapers reveals how Florida law allows state-run mental hospitals to conceal records of employees' abuse of patients, the Tampa Bay Times reported.

The Tampa Bay Times and Sarasota Herald-Tribune investigated injuries at six of Florida's major mental hospitals, where officials at the Department of Children and Families repeatedly denied reporters access to information, according to the

story. The reporters found cases where DCF sealed details of patients' deaths, classifying them as accidental, even when employees made mistakes or had acted negligently, the paper reported.

When reporters asked for names of employees accused of abuse, DCF cited Florida law, which protects the identities of individuals who report abuse, the victims and the accused employees. Even when employees admitted abuse or mistakes and were subsequently fired,

DCF can withhold the records, according to the paper.

DCF investigative files only become public record if officials decide the death is a result of abuse or neglect, the paper reported. DCF investigators have concluded that only four out of at least 55 deaths since 2009 have fallen under this category, according to the paper. However, the papers' investigation revealed four additional cases where public police and autopsy records show a patient died due to employee neglect, the paper reported.

*Source: Tampa Bay Times*

**OPEN  
GOVERNMENT**

## Senate passes cybersecurity bill

WASHINGTON – The U.S. Senate passed the Cybersecurity Information Sharing Act by a 74-21 vote, according to The New York Times.

The sponsors of CISA aim to help companies battle cyberattacks by allowing companies and the government to share information, the paper reported. The lawmakers concede that the law would not have prevented several of the most recent computer hacks, but say it would help in low-level cyberattacks, the

paper reported.

Civil liberties organizations and technology companies argue that the bill threatens consumer privacy and could expand government surveillance programs, according to the paper.

The Center for Democracy and Technology and the American Civil Liberties Union worry that the NSA and FBI could abuse the legislation by obtaining information on Internet users, unrelated to cyber threats, without a warrant, the paper reported.

*Source: The New York Times*

**PRIVACY**

## JEA faces Sunshine scrutiny

JACKSONVILLE – The Jacksonville Electric Authority will end its tradition of an annual New York trip for its board members after the public utility company fell under scrutiny for a possible Sunshine Law violation, according to The Florida Times-Union.

For years, a number of board members have taken the annual trip to meet with credit-rating agency analysts on Wall Street, the paper reported. However, only one board member, recently appointed Chairman Tom Petway, will attend this year,

according to the paper.

In a memo to JEA officials that followed weeks of scrutiny over Sunshine Law issues, General Counsel Jason Gabriel wrote, "In those instances where two or more Board members attend, they must be mindful of the Sunshine Law and if the meeting is not duly noticed and the public is precluded in any way, JEA business may not be discussed," the paper reported.

Other JEA officials, including Mayor Lenny Curry and City Council President Greg Anderson, will accompany Petway on the trip, according to the paper.

*Source: The Florida Times-Union*

**ACCESS  
MEETINGS**

## Florida earns D- in study on transparency

WASHINGTON – While Florida continues to earn praise for its Government-in-the-Sunshine laws, the state only earned a D- grade in a new study on transparency, The Florida Times-Union reported.

Based on scores in 13 categories that gauged accountability laws and how strongly they are enforced, Florida tied for 30th among the states in the Center for Public Integrity's 2015

State Integrity Investigation, the paper reported. The state received its lowest scores in the areas of elections oversight, state budget processes and management of civil service employees, according to the paper.

No state earned higher than a C in the study, but the highest grade went to Alaska, while Michigan earned the lowest score among 11 states with failing grades, according to the paper.

*Source: The Florida Times-Union*

**ACCESS**

## Scott's administration back in court over records

TALLAHASSEE – Gov. Rick Scott's administration is back in court over public records with the same attorney who won the \$700,000 settlement earlier this year for Scott's failure to turn over private emails, the Tampa Bay Times reported.

This time, attorney Steven R. Andrews is asking the court to force the Department of Corrections to turn over seven months

of search engine data from its chief inspector general, according to the paper. The DOC has had more than three months to fulfill the request, the paper reported.

Andrews seeks this information as part of a legal battle between several DOC employees and the agency, according to the paper. The employees allege that the chief inspector general, Jeff Beasley, has

inappropriately covered up inmate deaths and other suspicious activity by the DOC, the paper reported.

The DOC says it is in the process of fulfilling Andrews' request, but it wants him to pay his outstanding fees for previous requests before the agency turns over the documents, the paper reported.

*Source: Tampa Bay Times*

## Court rules commission not subject to public records law

BREVARD COUNTY – Florida's 5th District Court of Appeal reversed a decision that said the Economic Development Commission of Florida's Space Coast was subject to Florida's Public Records Act, according to Florida Today.

The three-judge panel, in a unanimous decision, ruled that Brevard County Circuit Court Judge John Moxley Jr. applied the wrong legal standard to determine whether EDC was a public agency, the paper reported.

The case arose from several public records requests submitted to EDC by Brevard County Clerk of Courts Scott Ellis, according to the paper. Ellis sought documents related to a technology company, which the prior clerk of courts had engaged to provide services for the

county, the paper reported.

Writing for the court, Judge James A. Edwards said that although Brevard County accounts for almost half of EDC's operational budget, "there is not a clear, compelling, complete delegation of a governmental function to EDC."

"Brevard County contracted with EDC to serve as the county's primary, not its sole, agent for economic development activity," Edwards added.

The court also affirmed the trial court's decision to deny Ellis' motion for attorney's fees, reasoning that EDC refused to provide the records with a good-faith belief that it was not an agent of the state.

*Source: Florida Today, Economic Development Commission v. Ellis, No. 5D14-1356*

## Hillsborough County calls for better open records rules

TAMPA – After a controversy surrounding a county transportation referendum led to hundreds of public records requests, Hillsborough County commissioners are pushing for a more open public records policy, according to the Tampa Bay Times.

According to Commissioner Ken Hagan, a 2011 statute sets forth strict protocols for fulfilling public records requests, but exempts commissioners, the paper reported. Through a unanimous vote, commissioners requested a draft proposal that would require a similar process, claiming they need a better system in place to deal with the increasing number of public records requests, according to the paper.

Hagan was in the center of the

controversy regarding the referendum, known as Go Hillsborough, the paper reported. A local TV station reported that he failed to turn over requested text messages and emails sent from private accounts, which related to a \$1.35 million contract, according to the paper.

"It is becoming crystal clear we need to strengthen our process of handling requests," the paper quoted Hagan as saying.

Commissioner Al Higginbotham says commissioners should also go through twice as much ethics training, the paper reported. However, other commissioners have pushed back on this plan and say it would be too burdensome, according to the paper.

*Source: Tampa Bay Times*

## Bill to shield witnesses from public records

TAMPA – Florida Rep. Ed Narain has filed a bill that would exempt the names of felony witnesses from the state's Public Records Law, according to The Tampa Tribune.

Narain proposed the measure in the belief that witnesses would be more likely to come forward with information to law enforcement if their identity remained private, the paper reported.

The exemption would shield witnesses' identities until the end of the prosecution of the crime or the expiration of the statute of limitations, according to the paper. This means that the names of witnesses would remain

secret through the

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end of trials, so even witnesses that provide testimony in open court would remain out of the public record, the paper reported.

This information has traditionally been open to the public, and the judicial system operates on the fact that participants of a case are known, according to the paper.

"Every person in the criminal justice system, whether they're a witness or not, their identities are never secret, never shielded," media lawyer Rachel Fugate said.

Currently, law enforcement withholds names of witnesses only during active investigations, but they release the details during a case's discovery process, the paper reported.

*Source: The Tampa Tribune*

## Agency won't release cost of spokesperson

TALLAHASSEE – Florida's tourism agency, Visit Florida, will not disclose how much taxpayers will pay celebrity Pitbull to be its spokesperson, according to WTSP 10 News.

Rapper Pitbull, whose real name is Armando Christian Perez, has agreed to be "Mr. Florida" for a year, the station reported. Visit Florida's Chief Marketing Officer Paul Phipps says that Pitbull's 1 billion social media impressions per month will allow the agency to market Florida to millennials, according to the station. When the station requested records to see how much taxpayers are paying Pitbull, nearly every word in the contract was redacted.

Phipps says the information falls under the state's "trade secrets" exemption, the station reported. Phipps promises that Pitbull gave the agency such a great deal that the details of the contract must remain secret to preserve the rapper's market value, according to the station.

*Source: WTSP 10 News (CBS Tampa)*

## ACCESS RECORDS

### THE BRECHNER REPORT

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## Commissioners face allegations of Sunshine Law violations

WALTON COUNTY – A Walton County Planning Commission Board member faces an allegation of violating the state's Sunshine Law by polling other board members through an intermediary, according to the Northwest Florida Daily News.

In an effort to remove Commissioner Suzanne Harris from the board, fellow board member Tom Terrell allegedly had a former board member call three planning

commissioners to ask if they would vote to oust Harris at their next meeting, the paper reported.

Terrell denied the charge, but all three members who were allegedly polled confirmed having received the phone calls, according to the paper.

The commission ultimately decided in a 3-2 vote not to reappoint Harris, the paper reported.

*Source: Northwest Florida Daily News*

## City racks up attorneys' fees

ST. PETE BEACH – The city of St. Pete Beach has to pay more than \$1.2 million in attorneys' fees for cases and settlements related to Florida's Sunshine Law, according to the Tampa Bay Times.

The city commission most recently agreed to pay \$496,000 over a three-year period to attorneys Ken Weiss and Tim Weber for their representation of resident

Jim Anderson, who sued the city over closed commission meetings, the paper reported.

Weiss said that some of the money will be used to fund an open government fellowship grant at the University of Florida Levin College of Law, according to the paper.

*Source: Tampa Bay Times*

## Ordinance to ban performers

WINTER PARK – The Parks and Recreation Board approved an ordinance that would ban street performers along Park Avenue in Winter Park, the Orlando Sentinel reported.

If the city commission agrees, the proposed ordinance will move actors, singers, musicians, and other performers to two "First Amendment zones," according to the paper. Violators could face criminal charges, including a \$500

fine or 60 days in jail, the paper reported.

Proponents of the ordinance say that street performers interfere with public health, cause dangerous pedestrian traffic, and affect the aesthetic interests of the historic district, according to the paper.

Several critics believe the ordinance is unconstitutional under the First Amendment, the paper reported. However, the federal courts governing Florida have upheld similar bans, according to the paper.

*Source: Orlando Sentinel*

## FIRST AMENDMENT

## Bear hunt raises records dispute

TALLAHASSEE – The Florida Fish and Wildlife Conservation Commission may have violated Florida's Public Records Law by redacting over 100 names on bear hunting permits, according to the Tallahassee Democrat.

FWC attorneys say the names were exempt under a portion of the law that limits the release of personal information related to certain public officials and their families,

according to the paper.

However, FWC's senior attorney conceded that the agency never received formal written requests for the exemptions, as required by law, the paper reported.

The exemptions angered animal rights activists who took to emailing permit-holders about their opposition to the bear hunt, according to the paper.

*Source: Tallahassee Democrat*

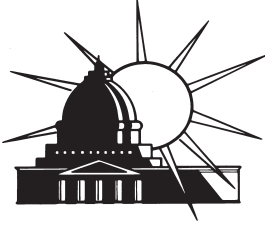
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## The quest for what Bob Graham knew or didn't know

Few journalists are aware of an unusual procedure by which documents classified by federal agencies may be declassified. It is a procedure well worth knowing.

First, here is how it came to my attention. I was prosecuting a Freedom of Information Act case seeking the records of an FBI investigation that took place in the days immediately after September 11, 2001.

I filed the lawsuit for Broward Bulldog, Inc., a terrific investigative news reporting service (known on the Internet as the Florida Bulldog). The Bulldog discovered that a family of Saudis living in Sarasota left the country shortly before 9/11 in a real rush. It seemed that someone had warned the family to get out of the United States fast.

What made discovery of these events odd was that Congress knew nothing about the family's sudden departure or the FBI's investigation of it.

U.S. Senator Bob Graham served as co-chair of one of the Congressional 9/11 committees and he told Bulldog founder and

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By Thomas R. Julin

publisher Dan Christensen that he was surprised and upset to learn about the FBI's investigation because his committee had tried to find out exactly what every agency did

in response to investigate the attacks. Graham confronted the FBI about why it had kept the Sarasota incident concealed.

The FBI's Deputy Director tried to persuade Graham that the Sarasota investigation had not turned up anything. But he also showed Graham documents that suggested that this was not true. When Graham demanded more information, he got none. The Bulldog then sued the FBI and Justice Department to release every document relating to the investigation.

The FBI first claimed to have no documents. Graham then gave the Bulldog a sworn declaration that he had been shown at least some of the investigative documents. That prompted the FBI to release 35 pages of records, including one memo stating that the investigation had "revealed many connections between the [Sarasota family] and individuals associated with the terrorist attacks on 9/11/2001." Other parts of the document were withheld on national security and other grounds.

The document proved that the FBI in fact had concealed an important investigation from Congress and this helped to persuade a federal judge to order the FBI to turn over to him all of its records that might have anything to do with the Sarasota



Thomas R. Julin

investigation. The FBI found 80,000 pages. The judge has been reviewing the records *in camera* for more than a year now. They contain what Bob Graham and Congress did not know about 9/11.

The reason that Graham was anxious to help the Bulldog was not just because he did not know about Sarasota. He also was frustrated that the FBI refused to let him tell the public what he did know about another important part of 9/11. The FBI had classified records that it did give Congress about whether the Saudi government supported the terrorist attacks on the United States. This required Graham to withhold, over his objections, 28 pages of his committee's final report on 9/11.

While we continued to try to find out more about what Graham did not know about 9/11, Graham got me interested in finding out what he did know and could not tell me. That led me to Executive Order 13256, signed by President Obama on December 29, 2009. It sets up the whole system for classifying federal documents.

Section 3.5 allows any citizen to send a letter to an agency asking it to declassify the documents. Although there are some important exceptions, it generally requires agencies to declassify documents that no longer meet the standards for classification.

I invoked this procedure on behalf of the Bulldog by asking the FBI to declassify the 28 pages of Graham's report. The FBI failed to respond within six months, but this gave the Bulldog a right to appeal to the Justice Department. The Justice Department also failed to respond within six months, giving the Bulldog the right to appeal to the Interagency Security Classification Appeals Panel, a group that consists of representatives of the State and Justice Department, the Director of National Intelligence, the National Security Agency, and the National Archives.

ISCAP serves as a direct advisor to the President. It has no deadlines for acting and it has not yet acted on the Bulldog's request which is now more than two years old, but ISCAP has a fairly good track record of overturning decisions (and non-decisions) of agencies that stubbornly keep documents classified way too long, and the cost of seeking declassification is minimal.

The next time you ask for a document and a federal agency responds: "Sorry, it's classified." Your response should be: "So, declassify it." More details about this procedure are available here: <https://www.archives.gov/declassification/iscap/>.

Thomas R. Julin is the chair of the First Amendment Litigation Group of Hunton & Williams LLP.