

THE BRECHNER REPORT

Volume 28, Number 6 ■ 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

June 2004

Officials surrender on Sunshine Law violation charges

NORTHBAY VILLAGE—North Bay Village Mayor Alan Dorne and Commissioner Armand Abecassis surrendered to state investigators on charges that they violated the state's Sunshine Law.

Authorities said the two men met privately on March 16 to discuss the firing of City Manager

ACCESS MEETINGS

James Vardalis. The Sunshine Law requires that the public be notified when any meeting is held between two or more officials.

The charges against the officials follow two other arrests on the North Bay Village commission.

In November 2003, Commissioner Robert Dugger was charged with official misconduct, in addition to seven misdemeanor counts related to votes he cast as commissioner.

In June 2003, David Fleischer was charged with bribery and corruption by threat of a public servant. Gov. Jeb Bush removed him from office and he subsequently received four years of probation after a plea deal.

"To have to arrest two more public officials of North Bay Village is a very sad occasion for this small community," State Attorney Katherine Fernández Rundle said.

Soon after they were arrested, Dorne and Abecassis resigned from public office. Prior to their resignation, they both faced suspension by Gov. Bush.

"We've heard about it and we're waiting for the [Miami-Dade] state attorney to give us all the info on the case," Bush spokesman Jacob DiPetre said.

(4/17/04)

Judge orders release of Cheney files

WASHINGTON—U.S. District Judge Paul L. Friedman ordered the Bush administration to release thousands of pages of records on Vice President Dick Cheney's energy task force deliberations.

Friedman ruled that records kept at the Energy and Interior departments must be disclosed to the public under the Freedom of Information Act. The agencies have until June 1 to release files that detail the work of Cheney's energy task force.

"This is a real affirmation of the public's right to know how its government is operating," Sharon Buccino, a lawyer for the Natural Resources Defense Council (NRDC), said.

The NRDC's case is just one of three

Court ruling exempts nonprofit entity from Sunshine, Public Records laws

BAKER COUNTY—The 1st District Court of Appeals ruled that a private nonprofit entity is not required to turn over records to *The Baker County Press*.

A three-judge panel agreed with the trial court that Baker County Medical Services Inc. (BCMS), which runs Ed Fraser Memorial Hospital and Wells Nursing Home in Macclenny, is exempt from Florida's Sunshine and Public Records laws.

In 2002, *The Press* asked a trial court to order BCMS to release its financial records and minutes of every board meeting since 1993. The company claimed that because it is a private corporation leasing a public health care facility, it was entitled to exemptions under two separate laws, Section 395.3036 and 155.40. The newspaper challenged the constitutionality of the two laws, but the trial court rejected *The Press's* request. To pass constitutional muster, the law's language had to justify the scope and necessity of the

legal efforts to obtain information on the task force, which developed an energy policy at the beginning of the Bush administration. Environmental groups argued that Cheney and his team met behind closed doors with lobbyists from the oil, coal, gas and nuclear industries.

The General Accounting Office, the research branch of Congress, first filed a lawsuit seeking information on who met with Cheney. A federal judge ruled against the agency, and it dropped the claim. Two other suits have moved forward. One involving the Sierra Club and Judicial Watch is now before the Supreme Court, and the other, which involves NRDC and Judicial Watch, is pending further action.

(4/02/04)

exemption.

Later, the appeals court found Section 155.40 unconstitutional, but upheld Section 395.3036. The ruling was not a practical benefit for the newspaper because Section 395.3036 still exempts BCMS from turning over its records.

"My feeling is the decision is a pretty harsh blow to the Sunshine Law," *The Press* attorney Robert Dees said. "The ruling doesn't have any effect, just as if the court ruled against all of the issues."

Publisher Jim McGauley said the newspaper will ask the court for a rehearing.

"The taxpayers of Baker County continue to pour more than three-quarters of a million dollars into the hospital and nursing home operations annually," he said. "As long as that situation exists, it will be the position of this newspaper that the public should have access to meetings and records of Baker County Medical Services Inc." (3/11/04)

ACCESS RECORDS

Residents sue city, claim merger violated state law

PARKLAND—Four Parkland residents filed a lawsuit against the city, claiming it violated the state Sunshine Law when the Public Safety Department merged with the Broward Sheriff's Office (BSO).

Attorney Marilyn Bonilla Krantz filed the suit in Broward County Circuit Court on behalf of her husband Stuart, Michael Lucente, Amy Conza and Natalie Jankowski Bigio.

The suit says that Vice Mayor Ricky Gordon, Commissioner Diane Weissman and Commissioner Michael Udine violated the law by participating in a backroom deal with BSO officials that gave the sheriff's department control to police Parkland.

Florida's Sunshine Law prohibits elected officials from discussing business without notifying the public.

"We just feel that this whole process wasn't performed correctly, or in the best interest of the city," Krantz said. "It's like it was a done deal from the beginning."

The suit specifically asserts that "Gordon and Udine had prior private conversations directly or indirectly through staff, the city manager or Sheriff [Ken] Jenne," without any input from Mayor Robert Marks, Commissioner Debby Beck or city residents. The plaintiffs are asking a judge to require commissioners to follow the Sunshine Law and overturn the contract with the Sheriff's Office. Udine denies any wrongdoing, claiming "I haven't reviewed the lawsuit, but I know I didn't violate the Sunshine Law." (3/11/04)

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.

Florida Crown Workforce director won't contest Sunshine infraction

LAKE CITY—John Chastain, executive director of the Florida Crown Workforce board, which helps secure jobs for those needing employment, decided not to contest a civil infraction for aiding and abetting a Sunshine Law violation.

Assistant State Attorney Bob Dekle said he was told Chastain acknowledged the violation, brought on by the State Attorney's Office, as an "error in judgment" and he is "on the path to righteousness."

On the recommendation of Florida Crown board attorney Paul Silverman, Circuit Judge Vernon Douglas fined Chastain \$100 for court costs.

Silverman said there was no harm to the public by Chastain's violation and that Florida Crown has taken actions to better educate its board members about the Sunshine Law to make sure it doesn't happen again.

"We are very sensitive now to[the]

sunshine Law," he said.

The State Attorney's Office filed a civil complaint against Chastain in December 2003. According to a report from James Matthews, the Agency for Workforce Innovation inspector general, Chastain sent an e-mail in July 2002 to certain board and staff members asking how to "get around" the Sunshine Law in order to hold a meeting with short notice.

In his December complaint, Dekle said that Chastain "did then and there unlawfully and willfully" cause Florida Crown board members to violate the Sunshine Law.

Silverman said he still believes that the meeting mentioned in Chastain's e-mail was never held and Chastain would have won a trial, had he decided to proceed.

"Mr. Chastain decided it was not in the best interest of the board to have a trial," he said.

(2/25/04)

Agency releases confidential records to public in Ronnie Simmons case

TAVARES—The Department of Children & Families (DCF) released confidential records to the public, following a court order in the case of Ronnie Simmons, an 8-month-old baby whose father says he buried him in the Ocala National Forest.

Jaclyn Hale, the baby's mother, and her family wanted to know why Ronnie, who had been under state supervision, was taken from their custody and given to his father Christopher.

Simmons' attorney Scott Wynn said his client did not object and asked "to let the sunshine in," apparently referring to Florida's Public Records Law, which gives the public broad access to government records.

Children's DCF and dependency records generally are closed. The agency agreed to open its records in the Simmons case but asked that all names be omitted and, in addition, objected to opening court files.

Rachel Fugate, attorney for the *Star-Banner*, argued that both DCF records

and court files should be opened "just so the public can have a complete and clear picture of all sides of the story, not just from DCF's records." Judge G. Richard Singeltary agreed, and ordered the DCF to open its files.

"I think the judge recognized the interest in this case and did the right thing and allowed the public access not only to DCF's file but also to the court file," Fugate said.

The records revealed that a positive home study was filed with the court on Feb. 10, 2003. The report said Simmons was employed, had a clean criminal record and his apartment was suitable for Ronnie and his half-brother, Jordan Coello.

But, a follow-up report on Oct. 10, 2003, indicated Simmons was located by DCF case workers three times without Ronnie in custody. After the workers made a couple of requests for arrest warrants, Simmons was eventually arrested in Texas. He claimed he buried Ronnie in the forest after the baby died of natural causes. (3/11/04)

ACCESS RECORDS

Attorney releases annexation documents

CRYSTAL RIVER—According to the *St. Petersburg Times*, City Attorney David LaCroix released his annexation records, e-mails and computer files to City Hall, in response to complaints that he wasn't complying with Florida's Public Records Law.

Annexation opponent Joanne Bartell had filed a complaint with the state Attorney General's Office in February, stating that LaCroix was not complying with the law. The city attorney offered to make the documents public in his office location in Brooksville, but Bartell argued that, by law, citizens should be able to

view them within the city's limits.

The Attorney General's Office offered to hold a voluntary mediation, but LaCroix did not reply, indicating he did not wish to participate.

Bartell viewed the public records, which included documents pertaining to Realticorp, the annexation developer, annexation materials, consent forms and information on the count of parcels.

LaCroix said his release of the files does not represent a new trend in public records requests, and he will make files available in the future depending "on the circumstances." (2/14/04)

Reporters ordered to erase recordings

WASHINGTON—The Reporters Committee for Freedom of the Press wrote a letter to Attorney General John Ashcroft after a marshal ordered two reporters to erase recordings of a speech made by Supreme Court Justice Antonin Scalia.

According to the committee's press release, Deputy U.S. Marshal Melanie Rube forced reporters from *The Associated Press* and *The Hattiesburg American* to erase their recordings of Scalia's speech, made at the Presbyterian Christian High School in Hattiesburg, Miss., on April 7.

"[The Privacy Protection Act] states that government officers and employees investigating a criminal offense may not search for or seize any work product

materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast or other similar form of public communication," the Reporters Committee claimed in the letter.

The committee emphasized that the guidelines in 28 C.F.R. Section 50.10 require that

"all Department employees obtain approval of the Attorney General before seeking to compel a journalist to turn over materials."

The letter requested that U.S. Marshals be reminded of and follow the Privacy Protection Act and the guidelines set forth in 28 C.F.R. Section 50.10. (4/08/04)

Judge dismisses First Amendment suit

KEY WEST—A federal judge dismissed a First Amendment suit against the city of Key West, overruling a federal magistrate's recommendation that the city be found liable for violating the plaintiff's rights.

Journalist Dennis Reeves Cooper, editor of *Key West The Newspaper*, sued the city and former Key West police chief Gordon "Buz" Dillon, after being arrested for publishing allegations of a police cover up.

Cooper had filed a lawsuit against the police department, claiming wrongdoing in a 1997 internal investigation. Later, he reported detailed portions of the complaint in his articles. Dillon arrested the journalist, claiming an obscure Florida statute, the "gag law," makes it a

misdemeanor for anyone involved in a police investigation to publicly reveal information about the investigation.

Criminal charges against Cooper were dropped, but the American Civil Liberties Union pushed to have the statute struck down by suing Dillon and the city, on behalf of Cooper.

In November 2003, federal magistrate John J. O'Sullivan wrote that Dillon had violated Cooper's First Amendment rights and that the city should be found liable. However, U.S. District Judge James Lawrence King struck down the legal challenges to the "gag law" after city lawyer Michael Burke successfully argued that the statute did not impinge on free speech. (2/11/04)

PRIVACY

FIRST AMENDMENT

Couple sues paper for defamation, emotional distress

SARASOTA—A Sarasota couple filed a lawsuit against the owner of the *Sarasota Herald-Tribune*, claiming the newspaper defamed them and cast them in a bad light.

In their lawsuit, Jeffrey and Naomi Pincus, who lived with murder suspect Joseph P. Smith, said the newspaper published "lies and half-truths" in a story about a Web site and video business linked to the couple. In addition, they claimed the newspaper inflicted emotional distress and engaged in unfair business practices, for which the couple seek unspecified monetary damages.

After Smith was arrested at their house for probation violation, the Pincuses gained national attention. Days later, Smith was charged with the abduction and murder of 11-year-old Carlie Brucia.

A Feb. 14 article in the *Herald-Tribune* mentioned a Web site called "Minc's Fantasy Fighting Girlz," which sold videos of women fighting. The article also said Jeff Pincus' name was listed on the site.

The lawsuit said the article contained "false, scandalous and defamatory" information.

Attorney David McCraw, who represents The New York Times Co., said the company will fight the lawsuit. (3/24/04)

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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.

Attorney General's Office: Open government mediation

A catering business proprietor asks a city recreation department for reservation data regarding park facilities. The director refuses to release the records unless the business owner writes a letter explaining why she wants the information.

In another part of the state, a homeowner, concerned about stadium lighting at a nearby high school, asks the school district to produce records disclosing whether it



Pat Gleason

The Back Page

By Pat Gleason

lighting plans constitute a “blueprint” which is confidential pursuant to a statutory exemption passed in the aftermath of the Sept. 11, 2001, attack on the World Trade Center.

A journalist requests copies of automobile crash reports from a law enforcement agency but is told that these reports are confidential for 60 days. The reporter points out that the statute specially exempts news organizations from the 60-day waiting period but the agency refuses to change its position.

A former state employee is unable to obtain a copy of a report that he prepared when he worked at the agency.

In each of these cases, the citizen obtained the records after contacting the Attorney General's Office to participate in open government mediation. The mediation program is established in section 16.60, Florida Statutes, as an alternative for the resolution of public access disputes. The program is voluntary and both sides must agree to consider mediation if the program is to be initiated. In 2003, 149 cases were handled in the mediation program. Of these, 110 or 74 percent were successfully resolved through the program. While a majority of mediation requests came from private citizens or organizations, small businesses, journalists and governmental agencies also used the program to resolve public access controversies.

In most cases, the process concludes with the citizen receiving records that were requested. However, in a few instances, the program helps to explain why the agency is not required to produce the records. In all cases, however, the goal is the same—to provide an informal process that allows a citizen and a governmental agency to resolve a public access controversy without having to resort to expensive and time-

consuming litigation.

The following are some of the issues addressed in the mediation program: May a city require a citizen to show a driver's license or furnish identification before providing records? Resolution: No.

May an agency require a citizen to fill out a form or submit a written request before receiving public records? Resolution: No.

May an agency require a citizen to state why she wants a public record? Resolution: No.

May an agency require a citizen to obtain computer stored data in hard copy, or is the agency required to provide the data on disk, if available? Resolution: Data should be provided on disk if available in that form.

Must an agency provide access to individual evaluations prepared by board members of the city manager, or may the agency provide access to a compiled version of the evaluation only? Resolution: Individual evaluations must be made available.

Is an agency required to prepare a transcript of a board meeting? Resolution: No. The Sunshine Law requires minutes, not a transcript.

May an agency exclude potential bidders from a meeting subject to the Sunshine Law? Resolution: No.

Must a university police department provide a copy of an arrest report to a reporter for the campus newspaper? Resolution: Yes.

Must an agency provide copies of applications for a new position within the agency? Resolution: Yes.

When both parties are committed to resolving a public access dispute through negotiation, open government mediation can be a cost-effective and efficient way to achieve a positive result for both sides. The resolution of public access controversies without litigation results in a cost savings to the governmental agencies and helps the public to secure access to public records and meetings, as mandated by Florida statutes and the Constitution.

Pat Gleason is General Counsel in the Office of Attorney General Charlie Crist. She is also the editor of the Government in the Sunshine Manual. For more information about mediation, you may contact her at: pat_gleason@oag.state.fl.us or (850) 245-0203.