
THE BRECHNER REPORT

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Agencies get lackluster reviews in records audit

A statewide public records audit by Florida news organizations revealed that 42 percent of local government agencies audited violated the state's Public Records Law.

During a week in February, volunteer journalists posed as ordinary citizens and requested records from county governments, city halls, school boards and sheriff's offices. Volunteers requested e-mails

from the county, city and school district officials and a log of incoming calls at law enforcement agencies.

Although requesters of public records are not required to offer their names, the audit found that names were demanded 16 percent of the time.

Eighteen percent of the agencies required a form or written request before releasing records.

Agencies were given an hour to tell volunteers that the records were public and when they would be available. Nearly 40 percent of the agencies took longer than an hour to provide that information.

"These laws are so important and so critical we shouldn't be satisfied with anything less than 100 percent compliance," said Pat Gleason, general counsel to Attorney General Charlie Crist. "That is the goal we should be striving to reach."

ACCESS RECORDS

FREEDOM OF INFORMATION

Major news outlets join battle for FEMA disaster aid records

ATLANTA – Major media companies have stepped up to assist three Florida newspapers in their fight for FEMA records.

The Associated Press, E.W. Scripps Co., Media General Corp. and the Tribune Co. filed a brief with the 11th U.S. Circuit Court of Appeals, urging the reversal of a lower court's ruling that the names of FEMA aid recipients are exempt from the Freedom of Information Act.

The News Press (Fort Myers), the *Pensacola News-Journal* and *Florida Today* sued in a federal court last year after FEMA refused to disclose details of how it distributed disaster assistance.

U.S. District Court Judge John E. Steele agreed with FEMA lawyers, who argued aid recipients deserved privacy protection in accordance with the federal Privacy Act of 1974.

The newspapers argued the information was necessary to examine alleged improprieties and fraud in the distribution of more than \$1.5 billion in disaster aid, according to the *AP*.

"The decision in this case will have a direct and immediate impact on the ability of the (media outlets) to report about both relief efforts that already have taken place and those that will take place in the future," attorneys for the media outlets wrote.

Court upholds commissioner's recall election

WINTER GARDEN – A recall election based on Sunshine Law allegations has been upheld by the 5th District Court of Appeals. Winter Garden residents recalled City Commissioner Bill Thompson in March 2005. Residents of a mobile home park claimed Thompson admitted on tape that he spoke to Mayor Jack Quesinberry about a proposal to close the park. Quesinberry has denied the allegations.

The 5th District Court of Appeals held that an Orlando trial court judge was correct in his finding that the recall petition was "legally sufficient" and allowing the election to go forward.

Deerfield officials cleared of Sunshine allegation

DEERFIELD BEACH – A city commissioner and Deerfield Beach's vice mayor did not violate the Sunshine Law in connection with a pension board appointment, according to the Broward State Attorney's Office.

Commissioner Marty Popelsky and Vice Mayor Steve Gonot were accused of having a

private discussion prior to appointing Andy Brown to the city's fire pension board. Deer Creek resident Steve Miller filed the complaint in September.

Assistant State Attorney Michael Horowitz wrote in a three-page report that there was no evidence that a Sunshine Law violation occurred.

Popelsky and Gonot both denied the claim.

Days before Miller filed the Sunshine complaint with the State Attorney's Office, he also filed a complaint against Gonot with the state Ethics Commission.

Miller alleged Gonot violated the Public Records Law and failed to report a possible conflict of interest. That complaint was dismissed in December.

ACCESS MEETINGS

Law enforcement agencies join to share data

JACKSONVILLE – Law enforcement agencies in Florida and Georgia have joined to form “the Google of law enforcement.”

The Southeast Law Enforcement Alliance Project combines data from police departments, sheriff’s offices and federal and state investigators into one database accessible by participating

agencies.

The project was formed in response to a finding by the 9/11 Commission that poor sharing of information between law enforcement agencies was a major failure leading to the terrorist attacks.

“Sharing of information is critical,” said Ken Tucker, deputy commissioner of the Florida Department of Law

Enforcement. Tucker described the project as “Google” for police.

The database is one of five in the United States. The Naval Criminal Investigative Service formed the project, and the Navy is paying for the \$2-million program.

Agencies can search for incidents, names, aliases, addresses, mug shots, warrants and other information across jurisdictions.

Study: Exemptions increase since terrorist attacks

TALLAHASSEE – Public access to government records has been steadily limited by states since the Sept. 11 terrorist attacks, according to a 50-state study by *The Associated Press*. Florida, however, has largely avoided this trend.

The *AP* study found that legislatures have passed more than 1,000 access laws

since the attacks.

More than twice as many laws that restrict information were passed than those that offer greater access to government information.

Florida has actually seen a reduction in the number of new open government exemptions passed each year, according

to the *AP*. In the legislative session prior to the terrorist attacks, 16 new exemptions were passed in Florida. That total has not been reached since the attacks.

Privacy, identity theft and protecting proprietary business information are the most common reasons cited for record exemptions, according to the *AP*.

ACCESS MEETINGS CONTINUED

Election meeting causes stir

TALLAHASSEE – A county commissioner and several reporters were removed from a March meeting between Secretary of State Sue Cobb and Leon County election officials.

Cobb’s office asked Leon County Commissioner Bob Rackleff to leave the meeting room because Commission Chairman Bill Proctor was already in the room.

The meeting was held to discuss a state deadline to get voting equipment for the disabled.

The commission was scheduled to vote on purchasing election equipment soon after the meeting.

Florida’s Sunshine Law would require the meeting to be open if both

commissioners were present to discuss a matter likely to come before the commission.

Capitol Police refused to keep Rackleff and the reporters from the meeting, according to the *The Associated Press*.

“Forgive us for this one-time meeting to be a little tough on that,” Cobb said. “We are obligated to get this done in a matter that benefits the state and the county.”

Notice of the meeting was sent by Leon County the day before, stating the meeting would likely include discussion on subjects which may appear before the Leon County Board of Commissioners, according to the *Tallahassee Democrat*.

Clerks push redaction changes

TALLAHASSEE – Under pressure to redact sensitive information from billions of pages of court documents by Jan. 1, Florida’s clerks of court are pushing a bill that would shift the burden of redaction to filers and require clerks to redact older records only if specifically requested to do so.

The proposed bill would make individual filers responsible for redacting

confidential or exempt information and replacing it with a number that would cross-reference a second, sealed document. Sen. Nancy Argenziano, R-Dunnellon, and Rep. Will Kendrick, D-Carrabelle, are the bill’s

sponsors.

The bill has raised fears that individuals seeking to avoid embarrassment could abuse the process.

Airport group, county face Sunshine suit

MIAMI-DADE COUNTY – The county is facing a lawsuit in connection with its decision to open non-aviation development at the Opa-locka Airport.

The suit alleges that the Opa-locka Airport Development Task Force violated the Sunshine Law by holding a private meeting.

Based on the task force’s recommendation, the Miami-Dade County Commission adopted an ordinance allowing non-aviation uses of the airport.

Such uses include retail stores and offices.

Businessman Stephen O’Neal filed the suit. O’Neal claims that during the task force’s first announced meeting on May 12, 2005, a member referenced an earlier “meeting before the meeting.”

“Besides the fact that this has an appearance of being illegal, my concern is that it spells the beginning of the end of general aviation at Opa-locka Airport,” O’Neal said, according to *Miami Today*.

O’Neal said the ordinance would not affect his airplane teardown business, but was worried small aeronautical companies would be limited by developers.

Mayor vetoes commission plan to rebut inaccuracies

MIAMI-DADE COUNTY – The mayor has vetoed a rule that would have allowed county staff to correct the public record during meetings of the Miami-Dade County Commission.

The rule, proposed by Commissioner Dennis Moss, was passed by a 6-5 vote in February. Moss declined to challenge the mayoral veto, citing a lack of votes needed for an override. In order to override Mayor Carlos Alvarez's veto, a two-thirds majority was needed.

"Much to do has been made about this resolution and basically all it does is require that the manager, county attorney and staff respond to issues when we've got public testimony when there are things that are inaccurate," Moss told *The Miami Herald* prior to the veto.

Moss has a second controversial proposal that may come before the commission. That proposal would allow Commission Chairman Joe Martinez to respond to "inaccurate or misleading"

statements made by the news media and the public. Martinez could take out print and broadcast ads as needed, without gaining the board's approval.

But Martinez expressed concern about the plan. "It has to be stricter, and there have to be guidelines to stop some chairperson in the future going berserk with the money," Martinez told *The Herald*.

The proposals came after criticism of the commission over expanding development in Miami-Dade County.

Victim's name prompts FIU to seize student newspapers

MIAMI – Florida International University officials confiscated thousands of newspapers from campus racks after student journalists printed the name of a sexual assault victim. Copies of *The Beacon* were returned the next day.

The article reported on testimony from the trial of an FIU public safety officer convicted of sexually assaulting an 18-year-old woman.

Beacon editor-in-chief, Harry Coleman, said the publication of the name was not completely intentional.

FIU's general counsel, Cristina Mendoza, ordered the seizure of the newspapers based on a Florida statute that prohibits the publication of information identifying a victim of

sexual assault.

Tom Julin, attorney for the student newspaper, contended that the statute was struck down by the Florida Supreme Court in 1995, and although it was later amended, the current statute is still unconstitutional.

Julin said the victim's parents and attorneys could have sought an order to protect her identity.

"We have a general counsel that is experienced. Her read was that it was a violation of shield law," said Ronald Berkman, FIU's acting provost.

"She acted on that basis, and it turns out that she was incorrect," Berkman said.

The Beacon later removed the victim's name from its Web site.

Village rejects civility proposals

WELLINGTON – The Wellington Village Council unanimously voted down a proposed resolution that would bar residents from asking council members questions or referring to them or staff in a "negative manner" during meetings.

The resolution would have expanded rules established in 1996 that prohibit citizens from making "slandorous and negative personal remarks" at meetings.

The council directed staffers to delete phrases from the resolution related to how residents should speak during meetings.

Village Attorney Jeff Kurtz defended the resolution. "The object of the rules is to have an effective, productive meeting," Kurtz said.

Officials said the rules were not proposed in response to any particular incident.

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COURTS CONTINUED

Officials speak out in favor of putting court records online

TALLAHASSEE – As it considers recommendations on how to balance privacy concerns and open records, the Florida Supreme Court is holding three public hearings on the issue.

The first meeting was held March 1, and representatives of court clerks, the media and businesses that rely on court files urged the court to allow electronic availability of records. Two years ago, the Court imposed a moratorium on most Internet court records. Since then, the Court-appointed Committee on Privacy

and Court Records proposed several recommendations, which the Court is now considering. The Court must clarify which Public Records Law exemptions apply to court records and decide which court records should be available.

"This is simply a stalling process," said Manatee County Circuit Court Clerk R.B. "Chips" Shore. "The moratorium, in my opinion, fears the future. It's like stopping the issuance of a driver's license because we're afraid somebody's going to get in an accident."

Citizens should take advantage of mediation program

To quote Florida Attorney General Charlie Crist, in his opening comments in the 2005 *Government-in-the-Sunshine Manual*, “State statutes and the Constitution mandate that public agencies open their meetings and records unless the Legislature determines that public necessity warrants exemption.”

Kind of gives you goose bumps, eh?

But it was the general counsel for the attorney general who really made my ears perk up recently in a presentation about how the laws are used to benefit the public, as well as reporters and the like.

Pat Gleason, the AG’s general counsel, addressed a gathering of editorial writers in Tallahassee. She explained the function of the Open Government Mediation Program, which she oversees, as well as the general benefits to the citizenry of having such laws.

For practical purposes, the mediation program is something even non-journalists should be particularly aware of.

Why? Only about one-third of those who use the program are journalists. Another one-third are government employees, leaving — you guessed it — about one-third ordinary, everyday citizens. Those “citizens” might come in the form of powerful business people or simply concerned individuals.

A couple of quick scenarios:

- A handful of mom-and-pop store merchants hear rumors that paperwork to clear the way for a Wal-Mart Supercenter has been filed with the local government. Wanting to know if their livelihoods may soon be threatened, one of the merchants asks a City Hall clerk for documents related to rezoning requests or property transactions that may shed light on the rumor. The government employee tells the merchant to buzz off because his coffee break is coming up and he doesn’t have immediate access to that information.

- A contractor makes a bid on a government construction job but isn’t awarded the contract. Curious about which competitor got the job, he asks to see the proposal submitted by the company that was awarded the contract to verify that it was the lowest and best bid. He, too, is told to buzz off.



Charlie Brennan

These examples, loosely based on a couple given by Gleason, illustrate where the mediation program comes in handy. Rather than a modest-income merchant taking City Hall — or county government or state government — to court, they can contact Gleason at the Attorney General’s Office in Tallahassee. Both parties must agree to mediation and roughly three-quarters of the time mediation will solve the problem.

It’s not fair to paint the government records custodian as the bad guy in all cases. Certain information is exempt and they have to exercise caution in releasing info. They may seek mediation to make sure they’re OK to release the info.

Gleason was quick to point out that denial of public records often results from testy bureaucrats who jerk people around as some sort of personal vendetta.

Sometimes people requesting information can be unpleasant, indecisive or funny looking, but if it’s public information, the government’s got to provide the information in a reasonable amount of time.

There are few absolute time frames for the “reasonable amount of time,” but simple requests should result in getting the information in a matter of minutes, while a request for 1,000 copies of a report may require two or three or four days.

If mediation is not agreed to, or fails, and the case goes to court, the government pays for both parties’ legal fees if records were illegally denied.

While Joe Taxpayer may correctly say, “My money’s going to pay for legal fees for some case I could care a hoot about,” the responsible agency will have some uncomfortable questions to answer. In the case of a state agency, it will have to answer to the state Legislature.

What it gets down to is state government being accountable to the people. The mediation program can save major headaches and major dollars. It’s one weapon in the Government-in-the-Sunshine arsenal intended to protect the public. It’s there for you.

Charlie Brennan is editor of the Citrus County Chronicle in Crystal River, Fla. He has worked at newspapers on Florida’s west coast for the past 24 years. This editorial originally appeared in the Chronicle and is reprinted with permission.