
THE BRECHNER REPORT

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Judge upholds Florida's 'Docs vs. Glocks' law

TALLAHASSEE – A Florida law restricting doctors' speech about guns was upheld by a federal appeals court, according to The Associated Press.

The 11th Circuit Court of Appeals found that the law, popularly known as "Docs vs. Glocks," legitimately regulated the doctors' conduct and doesn't violate the doctors' First Amendment free speech rights, the AP reported.

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The Florida Legislature passed the Firearm Owners' Privacy Act, which prohibits doctors from asking patients about gun ownership or recording the information in records, unless medically necessary, the AP reported.

"The Act as a whole 'governs occupational conduct, and not a substantial amount of protected speech,'" the opinion

stated. "Any burden the Act places on speech is thus incidental to its legitimate regulation of the practice of medicine."

The recent ruling overturned a previous decision that the law was unconstitutional. An injunction blocking the enforcement of the law is still in place, pending appeal, according to the AP.

Source: *The Associated Press, Wollschlaeger v. Florida, Appeal, No. 12-14009*

Expressway charge dropped

ORLANDO – The state dropped one charge of violating Florida's Sunshine Law against one of the individuals recently indicted in the investigation, according to the Orlando Sentinel.

Rebekah Hammond, the girlfriend of former state Rep. Chris Dorworth, had been charged with acting as a "conduit" and passing information between board members of the Orlando-Orange County Expressway Authority, the paper reported. Dorworth was accused of similar conduct.

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Although the charge against Hammond has been dismissed, Hammond will still be available to testify against Dorworth and Scott Batterson, another board member facing Sunshine Law and bribery charges, the State Attorney's Office told the paper.

A grand jury began investigating the expressway agency in September, the paper reported. The agency was disbanded last month and replaced by the regional Central Florida Expressway Authority, according to the paper.

Source: *Orlando Sentinel*

Program draws records scrutiny

VOLUSIA COUNTY – Recent conflict has shed light on a statewide program that allows students to attend private schools with state money, but does not require the same level of transparency as public schools, according to The Daytona Beach News-Journal.

A child pornography investigation and a lawsuit from one of Florida's largest teachers' unions highlighted discrepancies between public and private schools, the paper reported.

The Florida Tax Credit Scholarship program allows low-income students to attend participating private schools across the state, the paper reported. These

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private schools are not subject to Florida's Public Records laws like public schools are, according to the paper.

A teacher at Warner Christian Academy in Volusia County was charged with possession of child pornography, but the school did not have to make his personnel file public, the paper reported. Although Warner Christian Academy is a private school, it receives almost \$1.1 million in public money, according to the paper.

Additionally, the Florida Department of Education is not investigating the matter because the teacher is not certified, the paper reported. Private school teachers in Florida are not required to have teaching certificates, according to the paper.

Source: *The Daytona Beach News-Journal*

Media groups file EDC brief

BREVARD COUNTY – Several media organizations filed a legal brief in the appeal of the Brevard County Economic Development Commission public records case, according to Florida Today.

A group of 14 media organizations, including The Associated Press and several other Florida-based groups, submitted the brief in support of Brevard County Clerk of Courts Scott Ellis in his case that made the EDC's records subject to Florida's Public Records Law, the paper reported.

Circuit Judge John Moxley ruled in March that EDC documents relating to its role as the county's economic development agency were public records, according to the paper.

The EDC is appealing Moxley's ruling to the 5th Circuit Court of Appeal, the paper reported.

The EDC receives \$1.4 million each year from Brevard County for economic development, according to the paper.

Source: *Florida Today*

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Hospital faces records suit

DAYTONA BEACH – An Orlando television station is suing a public hospital, claiming that the hospital violated Florida’s Public Records Law, according to The Daytona Beach News-Journal.

In the lawsuit, WFTV argues that Halifax Health officials refused to release attorney billing documents from a 2009 whistleblower lawsuit the hospital was involved in, the paper reported. WFTV is demanding that Halifax Health release the documents.

WFTV initially requested the documents in May and asked Halifax Health to provide their attorney bills, which included hourly rates, according to the paper. Halifax Health refused to provide the itemized bills and argued that the documents were exempt from disclosure because they are attorney-

client work product, the paper reported.

Halifax Health has disclosed that it has paid \$24.3 million in legal fees since the whistleblower lawsuit was filed in 2009 but has not provided a breakdown of the bills, according to the paper.

“This is a public hospital,” Rachel Fugate, an attorney representing WFTV told the paper. “This is public money being spent on this defense and litigation. I think the public has a right to know how its money is being spent.”

The whistleblower lawsuit accused the hospital of illegally contracting with several doctors and overcharging Medicare for brief hospital stays, the paper reported. The hospital settled these claims.

Source: The Daytona Beach News-Journal

Media file redistricting motion

TALLAHASSEE – A coalition of media organizations asked permission to file a court brief on the voter redistricting case, according to The Gainesville Sun.

The group, which includes the First Amendment Foundation, the Florida Press Association, the Florida Society of News Editors and nine other newspaper companies across the state, asked the Florida Supreme Court for permission to argue for public access to documents used in the case, The Sun reported.

Pat Bainter, of Data Targeting, Inc., and a defendant in the case, asked the Florida Supreme Court to permanently seal company records that were used by Circuit Judge Terry Lewis to determine two of the newly drawn districts were unconstitutional, according to the paper.

The media organizations’ motion said the request to keep the documents sealed “raises important questions about the right of access to public records in Florida; whether documents introduced into evidence and relied upon by the trial court in a proceeding attacking as unconstitutional secrecy in the redistricting process can be kept, well, secret.”

The media organizations argued the Florida Supreme Court should reverse an earlier decision sealing the records and that the decision did not intend to seal the records permanently, the paper reported.

Source: The Gainesville Sun, Pat Bainter et al. v. League of Women Voters of Florida et al., Motion for Leave to File Amici Curiae Brief, Case No. SC14-1200

Council cleared in investigation

VOLUSIA COUNTY – The State Attorney’s Office cleared eight officials of potential Sunshine Law violations following an investigation, according to The Daytona Beach News-Journal.

Several residents filed complaints against four Volusia County Council members, two county employees and two state Department of Transportation officials regarding a Volusia trail project that would have impacted the residents’ land, the paper reported.

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The residents claimed the officials were attempting to use the trail project to disguise a future project to construct a four-lane road on the property, according to the paper.

The State Attorney’s Office found that the trail plans have been public knowledge for a long time, the paper reported. The investigation, which lasted 10 weeks, also concluded the planning of the trail project was properly noticed and forums had been held for a number of years.

Source: The Daytona Beach News-Journal

Chamber creates new development agency

PENSACOLA – The Greater Pensacola Chamber of Commerce has created a separate agency for economic development, according to WUWF Public Media.

The Chamber recently approved creating the independent Pensacola-Escambia County Promotion and Economic Development Commission to act as an economic promoter, WUWF reported.

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“[It’s] A separate organization entirely, with an entirely different board, a community board,” said Chamber President Jerry Maygarden. “And allow it to function as the chamber has in the past, but be primarily a recipient of public funds and responsible for the open records laws.”

The Chamber has been planning to separate its functions since last year, according to WUWF. The plan came after State Attorney Bill Eddins reminded Chamber officials that the Chamber was a private organization subject to Florida’s Sunshine Law.

“They’ve made the choice that they were going to receive money from the county,” State Attorney Bill Eddins told WUWF. “Anytime a private entity receives Money from a governmental entity and does a governmental function, they’re required to comply with the Sunshine Law. The policy behind that is real clear – the public has a right to know where public money is being spent.”

By moving out of the sunshine, the Chamber will no longer receive about \$850,000 a year from the City of Pensacola and Escambia County, WUWF reported.

Maygarden said the agency will be doing many of the same things that the Chamber did in the past.

Source: WUWF.org

Officials trip raises Sunshine Law questions

PASCO COUNTY – A trip by Pasco County School District officials may have violated Florida’s Open Meetings Law, according to the Tampa Bay Times.

The school district received an invitation to attend an education conference that began before the school board’s next meeting, the paper reported. Assistant Superintendent Amelia Larson called the board members individually to gain support to send a team to the conference.

The official approval of the travel occurred after the team had left for the conference, according to the paper. At the school board meeting, some of the board members expressed concern over the cost of the trip and the number of people attending, but approved the travel anyway.

Florida’s Open Meetings Law requires a governmental body to discuss all matters on which foreseeable action could be taken in an open meeting. A 1975 Attorney General opinion indicates that the staff of a government agency should not call the members of a board beforehand to ask for their positions on a matter they will later vote on.

Source: *Tampa Bay Times*, *AGO Opinion 1975-59*

Judge will not reconsider ruling

JACKSONVILLE – A Jacksonville judge will not reconsider his ruling that the Jacksonville Police and Fire pension fund violated the Sunshine Law, according to The Florida Times-Union.

Circuit Judge Waddell Wallace previously found that talks regarding pension benefits were held in secret, although public meetings were required, the paper reported.

The Fraternal Order of Police and the Jacksonville Association of Firefighters asked Wallace to reconsider his findings, according to the paper. The organizations argued they were part of the negotiations but their arguments were not initially heard by Wallace

because they were not parties in the lawsuit.

Wallace declined to reconsider his ruling because organizations were “not indispensable parties” to the lawsuit, according to the order. He mentioned affidavits from the leaders of each organization admitting the organizations lacked authority to settle the lawsuit.

Wallace’s ruling is currently being appealed to the 1st District Court of Appeal, according to the paper.

Source: *The Florida Times-Union*, *Frank Denton v. Mayor Alvin Brown et al., Order Denying Motion to Void Summary Judgment, No. 16-2013-CA-5799*

Former employee sues clerk

OSCEOLA COUNTY – A former staff attorney filed a lawsuit against Osceola County Clerk of Court Armando Ramirez, according to the Orlando Sentinel.

Adam Alvarez filed the lawsuit after he was fired on March 4 after alerting Ramirez about possible violations of Florida’s Public Records Law, the paper reported. Alvarez is seeking reinstatement, lost salary and benefits.

Alvarez alleges that Ramirez asked employees to contact him on his personal cellphone and email, according to the

paper. The Public Records Law requires public employees’ work correspondence to be available for public review.

Alvarez also alleges that Chief Deputy Clerk Jennifer Soto destroyed the criminal records of a friend and employee of the office, the paper reported.

The Florida Department of Law Enforcement investigated Ramirez earlier this year for potential violations of the Public Records Law, according to the paper. State Attorney Jeff Ashton cleared Ramirez following that investigation.

Source: *Orlando Sentinel*

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Groups sue county over project

MARION COUNTY – Several citizens and environmental organizations filed a lawsuit against the Marion County Commission alleging the commission violated Florida’s Sunshine and Public Records laws regarding a development project, according to the Ocala Star Banner.

The groups claim the commission violated the Public Records Law by failing to produce a finalized copy of an agreement regarding a development of a proposed technology park in Marion County, the paper reported.

The groups also claim the

commission violated the Sunshine Law by not designating the agreement as a separate topic at a hearing and not including the location of the property in the public notice, according to the paper.

The agreement at issue, between the county and Ocala developer Scott Siemens, describes what the developer can build, what the plans must include and when building can occur at the site, the paper reported.

The lawsuit claims that there was no advance notice that the agreement would be discussed at the May meeting, the paper reported.

Source: *Ocala Star Banner*

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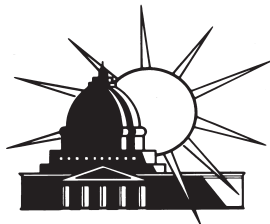
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Why FOIA's loophole needs legislative suture

The Tampa Tribune reporter Howard Altman submitted a Freedom of Information Act request to the Department of Veterans Affairs earlier this year to learn the names of hospitals where 19 veterans died due to medical screening delays.

Despite nationwide reports citing the deaths and the high public interest in information on the circumstances surrounding them, the VA denied Altman's request, citing the b(5) "deliberative process" exemption. The VA argued that the documents Altman was seeking were "preliminary," and that because "of potential variances in the preliminary data, premature release of this information would inaccurately inform the public concerning this matter."

The b(5) exemption cited by the VA potentially covers any "inter-agency or intra-agency memorandums or letters" and Congress intended its application to be narrow in scope. Agencies, however, are increasingly citing the b(5) exemption to hide any "draft" or "pre-decisional" document from the public, leading to the nickname the "withhold it

because you want to" exemption.

In addition to hiding potentially embarrassing or illegal activities at the VA, the b(5) exemption has also been used to withhold historically significant documents on the 20-year-old Rwandan genocide; shield a 30-year-old history of the 53-year-old Bay of Pigs invasion from public scrutiny on the spurious grounds that its release could "confuse the public;" hide a report critical of the Department of Justice's workplace diversity initiatives; and deny access to the DOJ's Office of Legal Counsel opinions, which form a body of law that binds all federal agencies concerning highly controversial programs, including enhanced detention and interrogation, targeted killing programs, and NSA dragnet surveillance.

According to statistics compiled by The Associated Press earlier this year, the b(5) exemption was invoked a record-breaking 81,752 times in 2013, and was applied to 12 percent of all FOIA denials across the federal government. These numbers confirm that the b(5) exemption is proving to be an increasingly attractive tool for agencies to deny information, despite the fact that this exemption has the highest possibility for discretionary release.

If agencies followed President Obama's 2009 FOIA memo



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instructing all agencies "to adopt a presumption in the favor of disclosure," and Attorney General Holder's guidance that documents should not be withheld "merely because [an agency] can demonstrate, as a technical matter, that the records fall within the scope of a FOIA exemption," we should be seeing the application of the b(5) exemption a lot less – not more. Sadly, it is clear that the President and Attorney General's mandates have not motivated intransigent agencies to embrace discretionary releases.

Agencies' continued misapplication and overuse of the b(5) exemption, despite President Obama's and Attorney General Holder's clear directives to the contrary, has prompted a longstanding push by the open government community for a legislative fix to end agencies' practices of withholding too much information.

These efforts to rein in the b(5) exemption recently culminated in the Senate when Sens. Leahy (D-VT) and Cornyn (R-TX) introduced legislation to fix the b(5) loophole: the FOIA Improvement Act of 2014, which would stipulate, among other improvements, that historical documents (documents created over 25 years ago) cannot be withheld under b(5), and would require agencies to balance the benefit to the public interest against the benefit of government employee confidentiality before withholding documents.

The b(5) pre-decisional exemption was initially conceived to prevent government employees from "working in a fish bowl," and to allow employees to give each other – and their supervisors – candid advice. These protections should and will remain.

President Obama has correctly stated, however, that the principles behind the Freedom of Information Act prohibit the government from withholding information to prevent embarrassment, hide errors or failures, or because of speculative or abstract fears. Unfortunately, these are precisely the things the b(5) "withhold it because you want to" exemption is being increasingly used to hide, as evidenced so plainly by the obfuscation of strictly factual information surrounding the deaths of 19 veterans waiting for medical treatment.

As Sens. Leahy and Cornyn have realized, the Freedom of Information Act's b(5) loophole must be legislatively closed to prevent agencies from abusing this exemption to "hide errors or failures," and to ensure that the principles of open government are fulfilled.

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