
THE BRECHNER REPORT

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Cabinet agrees to settle Sunshine lawsuit

TALLAHASSEE – Gov. Rick Scott and his Cabinet members have agreed to settle a lawsuit by many media organizations claiming the state officials violated Florida’s Sunshine Law, according to The Miami Herald.

The agreement ends the lawsuit filed by more than a dozen media organizations across the state alleging the Cabinet broke the law in firing Gerald Bailey as commissioner of the Florida Department of Law Enforcement, the paper reported.

Legal fees in the case will cost taxpayers over \$228,000, according to the paper.

The Cabinet agreed to several terms,

according to the paper. Among the conditions are: an agreement that the Cabinet must “promptly” forward all public records originally sent to private email to state email accounts, and no agenda item may be considered at a Cabinet meeting unless the issue has been discussed at a Cabinet meeting or a request for consideration is made to the governor in writing, the paper reported.

The Cabinet also agreed to expanded Sunshine Law training for their staffs, including a declaration that the Cabinet is bound by the law, according to the paper. Cabinet staff are bound by the law when

they are being used as a liaison to relay information about Cabinet business, the paper reported.

A circuit judge will also have jurisdiction over the agreement in the event Cabinet members violate it,

according to the paper.

Other terms of the

agreement include

recording meetings of

Cabinet aides to be posted

on the website, new guidelines for

hiring and firing personnel, and a second

public discussion and vote on Bailey’s

successor, Rick Swearingen, the paper

reported.

Source: The Miami Herald

**ACCESS
MEETINGS**

Florida Department of State releases private data

TALLAHASSEE – The Florida Department of State inadvertently released the personal information of thousands of Floridians, according to The Miami Herald.

The department said it released names, birthdates and Social Security numbers of approximately 13,000 citizens on waiting lists for services for the developmentally disabled, the paper reported. The list was compiled in 2003, when Jeb Bush was

governor, and was part of the information contained in Jeb Bush’s email release earlier this year, according to the paper.

The department accepted responsibility for releasing the information and warned individuals

to look out for fraud,

the paper

reported. The state also hired a private

company to provide free identity theft

protection to those individuals affected by the release, according to the paper.

Social Security numbers are exempt from disclosure under Florida’s Public Records Law and are usually routinely redacted, the paper reported. State and local agencies generally check records and redact information like Social

Security numbers before releasing them,

according to the paper.

Source: The Miami Herald

PRIVACY

Senators offered legal fees for private lawyers

TALLAHASSEE – The Florida Senate offered to reimburse legal fees for 21 senators involved in a public records lawsuit, according to the Tampa Bay Times.

The Senate authorized up to \$5,000 for each senator to hire a private lawyer to defend each of them after subpoenas were issued for information in a lawsuit related to redistricting, according to a Senate

memo sent to the subpoenaed senators.

“It’s curious that when we made public records requests for these documents they need to get lawyers,” said David King, lawyer for the plaintiffs in the suit.

The \$105,000 allotted to the senators for private counsel will be added to the more than \$1 million the Senate is already paying to defend themselves in the case brought by the League of Women Voters, the paper reported.

The lawsuit challenges the latest congressional voter redistricting plan,

according to the paper.

The plaintiffs requested the same documents from the Senate’s lawyers as they asked from the individual senators, the paper reported. The League of Women Voters has asked for all documents, including emails and any proposed maps, related to the final redistricting outcome, according to the paper.

Source: Tampa Bay Times, Florida Senate Memo Re: Stipend for Legal Representation in Senate Redistricting Litigation

**ACCESS
RECORDS**

Judge rejects Clinton email release plan

WASHINGTON, D.C. – A federal judge rejected the State Department’s plan to release emails from former Secretary of State Hillary Clinton, according to The Associated Press.

In a FOIA lawsuit filed by Jason Leopold of Vice News, Judge Rudolph Contreras ruled the agency must release the emails in batches, every 30 days, beginning June 30, USA Today reported. The State Department released the first wave of approximately 300 emails in

May, all of which are Benghazi-related, according to USA Today.

John Hackett, the agency’s FOIA officer, told the AP the department will continue to post the emails on its website after they are reviewed.

Clinton handed over 55,000 pages of emails in paper form to the State Department, according to the AP. Clinton said she wants the emails released as soon as possible, the AP reported.

Initially, the State Department proposed releasing all 55,000 pages of emails after a complete review, with a proposed release date of Jan. 15, 2016. In its latest proposal, the Justice Department lawyers representing State said it was “keenly aware of the intense public interest in the documents and wants to get releasable materials out as soon as possible,” according to the AP.

Source: The Associated Press, USA Today

Court rules in favor of Prison Legal News

WASHINGTON, D.C. – A federal appeals court ruled in favor of Prison Legal News’ Freedom of Information Act lawsuit against the Federal Bureau of Prisons, according to the court opinion.

The U.S. Court of Appeals for the D.C. Circuit ruled the Bureau of Prisons could not use a categorical explanation for redactions in documents that Prison Legal News requested, the opinion stated. The Bureau categorized all the

redactions under exemption 6, which shields personal information and similar files from disclosure, according to the opinion.

Prison Legal News filed a FOIA lawsuit against the Bureau in 2005, and the Bureau then produced about 11,000 pages of documents, 2,993 of which contained redactions, according to the opinion. The Bureau provided justification for the redactions, but Prison Legal News challenged the basis

for the redactions and the Bureau’s efforts to search for similar documents, the opinion stated.

The appeals court ruled the lower court did not properly balance private and public interests and the categorical approach to justifying redactions was inadequate in these circumstances, according to the opinion.

Source: Prison Legal News v. Charles E. Samuels, Jr., No. 1:05-cv-01812

Fired firefighter sues town for third time

PALM BEACH – A firefighter has filed a third public records lawsuit against the town of Palm Beach, according to the Palm Beach Daily News.

Firefighter Jason Weeks claims the town violated Florida’s Public Records Law by failing to turn over the records he requested, the paper reported.

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Weeks filed two previous lawsuits against the town, according to the paper.

The lawsuit filed in April 2014 is on appeal. The town settled the lawsuit filed in August 2014, agreeing to pay Weeks’ \$5,218 in attorney’s fees and produce the records, the paper reported.

Weeks also filed a whistleblower lawsuit against the town in September,

which the city settled for \$300,000, according to the paper.

Weeks was fired after a Palm Beach Fire Rescue investigation determined he used town resources to create a website critical of the town’s pension cuts, the paper reported. Weeks claims he was told to create the website by the fire chief, according to the paper.

Source: Palm Beach Daily News

Supreme Court rules in online threats case

WASHINGTON, D.C. – The U.S. Supreme Court ruled in a free speech case, making it harder to prosecute people for posting threats on social media, according to The New York Times.

The Court said the defendant’s state of mind matters when determining whether a statement posted online is a threat, the opinion stated. The evaluation requires more than proving that a reasonable person would view the statements as

threats, according to the opinion.

The case concerned threats made by Anthony Elonis, a Pennsylvania man

who posted rap lyrics on Facebook, the paper reported. Elonis wrote about killing his ex-wife and an F.B.I. agent in the posts, some of which contained disclaimers that they were art or therapy, according to the opinion.

Elonis’ conviction was overturned

**FIRST
AMENDMENT**

by the ruling, the paper reported. The Court said Elonis had to intend to make threats in order to be convicted, the paper reported.

The Supreme Court has ruled “true threats” are not protected by the First Amendment, but the threats doctrine has not been clearly established, according to the opinion.

Source: The New York Times, Elonis v. United States, No. 13-983

Mayor files complaint

DEERFIELD BEACH – The mayor of Deerfield Beach filed a Sunshine Law complaint against the vice mayor, according to the South Florida Sun-Sentinel.

Mayor Jean Robb filed the complaint with the State Attorney's Office against Vice Mayor Bill Ganz, claiming that Ganz violated Florida's Sunshine Law by whispering in her ear, the paper reported.

The exchange between Robb and Ganz occurred at a City Commission meeting while discussing a proposed organizational shift in the city workforce, according to the paper. Robb spoke out during the meeting against the reorganization, the paper reported.

Robb told the paper Ganz whispered in her ear to vote for the reorganization, which Robb considered a Sunshine Law violation, according to the paper.

Ganz denied telling Robb to vote for the reorganization, the paper reported. He said he advised Ganz to talk to the City Manager about how the reorganization would save money, according to the paper.

Source: South Florida Sun-Sentinel

Discussion raises questions

OCALA – A discussion following a Marion County School Board meeting raised potential Sunshine Law concerns, according to the Ocala Star Banner.

Board member Nancy Stacy and chairwoman Angie Boynton stayed in their seats in the board room for about an hour after a regular public board meeting, the paper reported. The private discussion between the two members led district administrative staff members to ask questions about whether they violated Florida's Sunshine Law, according to the paper.

Deputy Superintendent of Schools Lisa Krysalka heard staff concerns about the discussion and contacted district attorney Stephen Lake, the paper reported. Lake investigated the matter and found that no violation took place, according to the paper.

Stacy was working on a project following the meeting and Boynton was there to sign documents as chairwoman, the paper reported. Boynton said she and Stacy did not talk about board business, according to the paper.

Source: Ocala Star Banner

Appeals court hears EDC case

BREVARD COUNTY – An appeals court heard arguments in the Brevard County Economic Development Commission public records case, according to Florida Today.

The 5th District Court of Appeal asked attorneys for each side a number of questions about the extent to which the EDC's records should be public, the paper reported.

The EDC is asking the court to reverse a March 2014 ruling stating that because of the EDC's role as the county's economic development agency, any records created in that capacity are public records, the paper reported. The case was filed by Brevard County Clerk

of Courts, Scott Ellis, according to the paper.

The EDC argued Florida's Public Records Law does not apply because it is just one of a number of entities that do economic development work in the county. The commission argued it does not make final development decisions and it is a private, non-profit organization, the paper reported.

The EDC receives \$1.4 million a year from the county, according to the paper.

Ellis is also appealing the part of the ruling that his office is not entitled to attorney's fees from the EDC, the paper reported.

Source: Florida Today

**ACCESS
RECORDS**

Senate passes NSA reforms

WASHINGTON, D.C. – The Senate voted to end the NSA's bulk data collection of Americans' phone records, according to USA Today.

The Senate passed the USA Freedom Act, which the House passed last month, the paper reported. The Act restored some of the NSA's authority under the USA Patriot Act, which expired days before the USA Freedom Act, but ended some of its controversial domestic surveillance practices, according to the paper.

The USA Freedom Act alters Section 215 of the Patriot Act to prohibit the NSA from continuing their bulk phone collection program, the paper reported. Phone companies will not keep

the data, and the NSA can obtain the data with a court order, according to the paper.

The passage of the USA Freedom Act represents a victory for privacy and civil liberties advocates in Congress, the paper reported.

"This is the most important surveillance reform bill since 1978, and its passage is an indication that Americans are no longer willing to give the intelligence agencies a blank check," said Jameel Jaffer, the ACLU's deputy legal director. "It's a testament to the significance of the Snowden disclosures and also to the hard work of many principled legislators on both sides of the aisle."

Source: USA Today

PRIVACY

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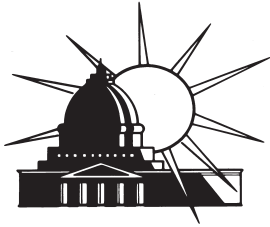
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Drone law clouds skies over Sunshine State

The federal government is not quite ready to let drone journalism take off. But even when officials in Washington D.C. clear that runway, Florida threatens to keep aerial photographers grounded.

For the last year, a coalition of news media has been working in conjunction with researchers and the Federal Aviation Administration (FAA), to develop safe standards and practices to allow maximum First Amendment freedoms of newsgathering from the skies.

Their efforts were spurred by the FAA and Congress' work under 2012 federal law, in which the Obama Administration has required the integration of unmanned aerial systems (UAS) – the name officials use for “drones” – into the nation’s heavily-controlled air space. Understandably, regulators’ primary concern has been safety. Until new regulations are finalized,

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By Charles Tobin

UAS use for commercial purposes, which under federal definitions includes news media use, is unlawful without a special FAA exemption.

A number of states, driven chiefly by privacy concerns that police will use UAS without securing search warrants, have passed restrictive laws ahead of the federal regulations. Florida’s new law, enacted in the last session of the Legislature and signed by Governor Rick Scott, is one of the most reactionary.

And, as applied to the news media, it is the most antithetical to the First Amendment. Under Florida’s new law:

- No one may “use a drone equipped with an imaging device to record an image of privately owned real property or of the owner, tenant, occupant, invitee, or licensee of such property with the intent to conduct surveillance on the individual or property captured in the image in violation of such person’s reasonable expectation of privacy without his or her written consent.”
- A person’s privacy is presumed if the person is “on his or her privately owned real property if he or she is not observable by persons located at ground level in a place where they have a legal right to be, regardless of whether he or she is observable from the air with the use of a drone.”
- Violators may be sued for damages, including punitive damages, and the plaintiff can recover his or her legal fees.
- There are exceptions for certain utility company use and



Charles Tobin

for “assessing vegetation growth” on rights-of-way, but no exceptions for First Amendment activities like newsgathering.

The law as written may have a very real impact on news photographers’ use of UAS, in a state that has previously prided itself on its protective, open environment for journalism.

Would coastal Pinellas County homeowners have a viable claim against newspapers that use UAS to photograph hurricane destruction? On its face, the law provides that homeowners may sue when their property is

filmed without consent, even if they aren’t home.

Would a South Florida homeowner have a viable claim if a fleeing criminal suspect hides in their yard, and UAS journalists film the arrest and capture? On its face, the law provides that privacy is presumed invaded if anyone uses a UAS to photograph over a fence.

Would a neighbor grilling on his patio in Palatka have a viable claim if a UAS captures a glimpse of him while filming firefighters rescuing a kitten from an adjacent tree? On its face, the law provides for claims no matter how incidental, inadvertent, or inoffensive the image.

In addition to these practical problems, the new drone law threatens to erode decades of hard-fought First Amendment decisions in Florida providing broad discretion for journalists to report on news outdoors.

Florida, like all other states, has well-defined laws against Peeping Toms, wiretapping and electronic eavesdropping. Those laws are platform-agnostic and could easily apply to wrongful UAS photography. No new laws were necessary, especially where they contain no exemption for news.

Unfortunately, Florida’s lawmakers pandered to panic and gave short shrift to journalism in the public interest. And, in the process, they have cast a cloud across the news media horizon in the Sunshine State.

Charles D. Tobin chairs the National Media Practice Team at the law firm of Holland & Knight LLP and is based in Washington, D.C. He is a former chair of the Florida Bar and D.C. Bar Media Law committees, and the American Bar Association Forum on Communications Law.

For more information: <http://www.hklaw.com/news/News-Media-Coalition-Announces-Partnership-to-Test-Small-News-Drones-at-FAA-Test-Site-01-15-2015/>