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# THE BRECHNER REPORT

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Volume 24, Number 3 ■ 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

March 2000

## Miami paper sues for airport spending records

MIAMI — In an effort to gain access to spending records, *The Miami Herald* is suing the company overseeing the \$5 billion, 20-year expansion of Miami International Airport.

In its suit, the paper claims that

**ACCESS  
RECORDS**

Dade Aviation Consultants should be required to reveal records, such as lobbying expenses, as if it were a public agency. Dade Aviation claims that no “public record” of lobbying payments exists.

The consultants, a joint venture of eight companies that has collected more than \$78 million in county funds since being hired in 1992, claim that only records directly related to county contracts are subject to the Sunshine laws. (1/25/00)

## Hospital must pay attorney fees

TAMPA — Tampa General Hospital has been ordered by a Hillsborough Circuit Court judge to pay attorney fees for two newspapers who filed and won public record suits against the hospital.

Judge Edward Ward has ordered the hospital to pay \$65,000 in attorney fees to the *St. Petersburg Times* and

\$227,131 to *The Tampa Tribune*.

Last October, Ward ruled that the records were public, even though the hospital converted from a public to private non-profit operation in 1997. Lawyers for the hospital are appealing his rulings and his decision to award the attorney fees. (1/13/00)

**SPECIAL  
REPORT**

See Legislative Preview  
inside on pages 3 -5.

## Airport authority asks Legislature to keep records secret

SEBRING —The Sebring Airport Authority is seeking support from the state Legislature to allow them, while in negotiation, to keep names of potential business developments secret during negotiations.

**ACCESS  
MEETINGS**

Airport officials claim that confidentiality plays a key role in luring new business or industry to the area. But local residents oppose the proposed amendment. “Confidentiality should not outweigh the

public’s right to know,” said Monty Boone, a local resident.

Additional proposed measures include raising the public bid process for airport projects from \$5,000 to \$10,000 to expedite future projects and a confidentiality clause. (1/5/00)

## Governor not trying to control tape says aides

TALLAHASSEE — Staff members of the governor’s office attempted to limit distribution of videotaped comments made by Gov. Jeb Bush during a sit-in at the Capitol in January, but deny they were trying to control the broadcast.

**FIRST  
AMENDMENT**

In an interview with the *St. Petersburg Times*, Bush’s spokesman Justin Sayfie said that he contacted *CONUS Communications* to make

sure the governor’s comments were put in the right context. In the videotape, the governor tells his aides to “kick their asses out,” a reference to nine reporters who monitored two legislators in the all-night sit-in. State Sen. Kendrick Meek and Rep. Tony Hill refused to leave Lt. Gov. Frank Brogan’s office in opposition to Gov. Bush’s One Florida initiative.

According to Sayfie, a Miami station attributed the remark to the legislators, rather than the reporters, “I said if they were going to distribute it, they should have some context,” he said.

Following the discussion, *CONUS* agreed not to sell copies of the videotape to stations outside their network.

*CONUS* provides reports to 12 news stations in Florida. (1/21/00)

## Judge releases triple murder suspect files to media

MANATEE COUNTY — A circuit court judge refused to issue a gag order for court materials in the trial of triple murder suspect Larry Parks.

The request for a gag order by Chief Assistant Public Defender Jim Slater was overly broad, ruled Judge Janette Dunnigan. According to the *Bradenton Herald*, Slater asked that the order be issued not only for investigators, attorneys and witnesses, but also court personnel,

parties or “anyone who is connected to the prosecution or the investigation.”

The *Herald*, along with the *Sarasota Herald-Tribune* and *WFLA-TV* opposed the sealing of court records. Attorneys for the *Herald* claimed that Slater had no grounds for requesting that records be sealed and that he has “failed to identify even a single statement or a single document that supposedly jeopardizes fair trial rights.”

Slater filed a second gag order request, alleging that members of the Manatee County Sheriff’s office have “provided the media with facts surrounding this offense in such a manner as to jeopardize the ability of the defendant to obtain a fair trial in Manatee County.”

Parks was arrested last October on charges that he murdered a woman and her two young daughters in their home. He plead not guilty to the charges. (1/12/00)

## Officer under drug investigation was promoted by chief

ST. PETERSBURG -- In an effort to end two public record lawsuits, a police chief has admitted he knowingly promoted a police lieutenant who was part of a drug-dealing investigation.

According to the *St. Petersburg Times*, in his signed affidavit, Police Chief Goliath Davis III said that he knew Lt.

Donnie Williams was part of a drug investigation being conducted by a multi-agency task force, but that the police department did not single him out after receiving a tip that he was dealing cocaine in 1998.

The two public records access lawsuits were filed by the *Times* and the

Pinellas County Police Benevolent Association last year. Attorneys for the police union and the newspaper plan to continue their effort, saying that the affidavit is evasive. Under state law, records from a closed investigation are public, but those from an active investigation can remain closed. (1/26/00)

## Adoptee allowed access to file, annuls adoption

PALM BEACH — An 8th Judicial Circuit court judge has given an adoptee the right to open his adoption records. In addition, Judge Maurice Giunta granted an annulment of the adoption, noting abuse and inaccuracies in the adoption process.

Palm Beach resident Michael Chalek sought to open his adoption records as a way to sever ties with his

deceased adopted parents. Adoption records are not public records and usually a judge will grant access only for medical reasons.

But in this case, Giunta allowed the unsealing because the adopted parents lied about their previous marriages and abused Chalek as a child.

Mainly symbolic, the annulment allows Chalek to amend his birth

certificate to include the names of his birth parents and his given name at birth.

Chalek believes his success may pave the way for others seeking information on their adoptions and is writing a book on his ordeal. “These archaic laws need to be changed for adoptees,” Chalek said. “Adoptees are not given any rights like adoptive and birth parents.” (1/4/00)

## ‘Bucs owner wants new ruling

TAMPA — A Palm Beach millionaire has asked a three-judge panel to overturn a ruling on releasing records of the \$168 million publicly financed Raymond James Stadium.

The stadium is the home to the Tampa Bay Buccaneers, owned by Malcolm

Glazer. Glazer asked the three-judge panel from the 2nd District Court of Appeal to review his appeal.

He also asked the court to throw out the ruling by Judge Gregory Holder that he had “schemed” to avoid the public records laws. (1/20/00)

## Outside legal fees public record

GAINESVILLE - Outside attorney fees for county defense as well as its employees for alleged civil rights violations are public record, according to an Attorney General opinion.

“Records of attorney fee bills received by the county’s risk

management office under the county’s risk management program constitute public record,” said state Attorney General Bob Butterworth, in response to a query from Alachua County attorney David Wagner.

If the bills or invoices contain

## DECISIONS ON FILE

*Copies of case opinions, 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, University of Florida, Gainesville, FL 32611-8400, (352) 392-2273.*

information such as litigation strategies, legal theories or conclusions, that information may be deleted, but the remainder must be disclosed, said Butterworth. (AGO 2000-07, 1/27/00)

# FIRST AMENDMENT

## Off-duty police dispatcher fired for possible leaks to press

DAYTONA — A Daytona Beach police dispatcher was fired for an allegedly unauthorized discussion with the press about an unconfirmed crime.

Burlie Ann Irick had been with the Daytona Beach Police Department for almost 20 years. Last year, Irick was interviewed by several reporters in

reaction to the robbery and murder of Roosevelt Payne.

According to the *Daytona Times*, Irick was fired for allegedly releasing information about a crime to the news media that was unconfirmed and was not authorized for release by investigative or supervisory personnel.

In her defense, *WESH* reporter Gail Paschall-Brown wrote a letter to the police department explaining that she had asked Irick her reaction to the crime. "I can tell you Ms. Irick spoke only to me as a friend of the family, not as an informant from the police department," said Paschall-Brown. (12/29/99)

## Airport imposes ban on talking to press

MIAMI — Miami International airport officials have banned employees from talking to the press without permission saying "they want to track what employees are telling reporters."

In January, Miami Aviation Director Gary Dellapa sent a memo to airport employees reminding them to seek permission before speaking to the press.

Dellapa says the memo is not meant to scare employees, that he's trying to insure that "the whole story gets told."

The memo was issued on the heels of a series of investigative reports on the airport's operations published by *The Miami Herald*. The series focused on alleged waste and corruption at the airport. (1/10/00)

THE  
**BRECHNER**  
REPORT

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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.

## NEWS NOTES

### Book helps public records search

JACKSONVILLE — A handbook designed to assist in the public-record search has been published by a Jacksonville reporter. Joe Adams has spent the last 10 years researching and writing, *The Florida Public Records Handbook*.

The book should be a valuable resource for writers and individuals seeking information from police reports to property deeds to useful Web sites.

"I've always looked at public records as our friends," said Adams. "This was a way to introduce people to friends they haven't met yet."

The book details the 170 most useful public records, including key documents at city hall, the courthouse, state agencies and on the Internet.

The book was published by the First Amendment Foundation and funded through a grant from the National

Freedom of Information Coalition and the John S. and James L. Knight Foundation. *The Public Records Handbook* was designed as a companion to the *Government-in-the-Sunshine Manual*, also published by the First Amendment Foundation. (1/3/00)

## LEGISLATIVE PREVIEW CONTINUED

### From Page 4

**SB 1002 Blueprints/Educational Facilities** (Sen. Education Committee) Creates a public records exemption for educational and state university facilities. Also creates a public meetings exemption for those portions of all meetings or proceedings relating solely to the exempt blueprints. Requires the Department of Education and the Board of Regents to prescribe, by rule, the exempt information relating to the blueprints.

**SB 1256 Seaport Security Plans** (S. Criminal Justice Committee) Creates a

public records exemption for seaport security plans of a county or municipal seaport department or a seaport authority created by the Legislature. Also exempts photographs, maps, blueprints, drawings and similar material if a seaport department or authority determines that such items contain information that is not generally known and that could jeopardize seaport security. Stipulates that real estate leases, layout plans and related blueprints are not exempt and specifically limits the exemptions to records held by a seaport authority or seaport department that

operates a seaport.

**SB 1262 Money Transmitter Records** (Criminal Justice) Creates a public records exemption for all investigative records conducted by the Department of Banking and Finance (DBF) pursuant to the Money Transmitter's Code until the conclusion of the investigation or examination. Includes provision that closes records of administrative, civil, or criminal proceedings if the proceedings end in an acquittal or dismissal.

# LEGISLATIVE PREVIEW

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Controlling information on the Internet, opening employment records in selected state agencies and limiting public access to disciplinary action against physicians are just a few of the bills submitted for consideration during the 2000 Legislature.

Below is a listing of bills filed through Feb. 15 that affect public records and open-meeting laws and other First Amendment issues. Bill information was obtained from the Florida Legislature's Internet home page, "<http://www.leg.state.fl.us/>." Additional legal research and analysis was provided by the Florida First Amendment Foundation.

Bills are listed in chronological order. Chief sponsors of the bills are in parentheses next to the corresponding bill numbers. When applicable, identical or similar bills are noted at the end of the summary.

House Bill summaries:

**HB 37 Funding of Legislative Projects** (Merchant, R-Palm Beach) Establishes a formal review process for legislative projects not recommended by the Governor or a state agency (better known as "turkeys"), requiring a public hearing in both the House and the Senate, and that such projects meet certain minimum criteria. Identical to **SB 330** (Saunders, R-Lee/Collier)

**HB 125 Release of Employment Records** (Tullis, R-Duval) Requires an employer to release employment and other records to law enforcement officers, correctional officers, or correctional probation officers conducting background investigations for employment. Also requires the officer seeking release of the information to provide the employer with an "authorization for release of information" form. Similar to **SB 378** (King, R-North Florida)

**HB 181 Changes to Financial Disclosure Process** (Arnall, R-North Florida) Specifies that certain financial disclosure statements of former officers and employees are public records.

**HB 197 Government Products and Services over the Internet** (Greenstein, D-Broward) Provides for governmental products and services to be made available on Internet under certain circumstances; directs state system of public education to make reasonable progress towards making certain products available on Internet; provides for responsibilities of Department of Management Services such as information technology; provides for state agency information technology plans; provides for audits.

**HB 383 Statewide and Local Advocacy Councils** (Littlefield, R-Pasco/Hillsborough) Renames statewide and district human rights advocacy committees as Florida statewide and local advocacy councils; provides for duties of councils for monitoring activities of, and investigating complaints against, state agencies that provide client services; provides for access to records of state agencies subject to council investigations. Compare to **SB 340** (Carlton, R-Sarasota/Charlotte/Lee) and **678** (Forman, D-Broward/Dade)

**HB 419 Tobacco Production Relief** (Stansel, D-North Central Florida) Provides for use of portion of state's tobacco settlement funds to compensate persons and communities adversely affected by settlement; provides for public meetings and records. Compare to **HB 421** (Stansel, D-North Central Florida)

**HB 429 Identifying Information/Cash Assistance Programs** (H. Committee on Children and Families) Creates a public meetings exemptions for portions of meetings held by certain, specified agencies at which information identifying individuals who have applied for or are receiving temporary chase assistance will be discussed. Also creates a public records exemption for information identifying such individuals.

**HB 439 Certified Capital Companies** (Crow, R-Pinellas) Creates public records exemptions for (1) information submitted by or collected from a certified capital company (CAPCO) during an investigation or review by the Department of Banking

and Finance; (2) any reports prepared by or for the use of the Department as a result of an investigation or review of a CAPCO, including working papers; and (3) information submitted to the Department related to personal financial matters of a CAPCO principal.

**HB 505 Donors/Direct Support Organizations** (Betancourt, D-Dade) Deletes the current exemption for the identity of donors to a university, community college or direct support organization. Also prohibits contributions by such direct support organizations to political campaigns or political action committees. Identical to **SB 890** (Kurtz, D-Brevard/Indian River/St. Lucie)

**HB 553 Deferred Presentments** (Barreiro, R-Dade) Revises definitions; provides additional grounds for disciplinary action, provides for continuation of certain administrative proceedings under certain circumstances; deletes provisions providing public records confidentiality for certain hearings, proceedings and emergency orders; creates "Deferred Presentment Act."

**HB 633 Release of Student Records** (Alexander, R-Hillsborough/Polk) Authorizes the release of personally identifiable student records to the Department of Highway Safety and Motor Vehicles and the Department of Children and Family Services for certain purposes. Also clarifies provisions regarding the release of student directory information, requiring schools to provide written notification prior to the release of the information and to obtain written authorization for such release. Identical to **SB 848** (Laurent, R-Polk/Okeechobee/Highlands)

**HB 683 Relating to Lewd or Lascivious Exhibition Over the Internet** (Frankel, D-Palm Beach) Provides penalty for transmission of such exhibition over Internet under certain circumstances; conforms cross reference; reenacts specified provisions such as the definition of "sexually violent offense," for purposes of provisions such as the Community Alcohol, Drug Abuse and Mental Health Services.

## From Page 3

### **HB 751 Creation of Florida Sports**

**Authority** (Rojas, R-Collier/Dade) Creates Florida Sport Authority; provides for submission of annual budget to state audit contract and authority projects; provides for public bidding process; provides for revenue application and authority to operate Florida Sports Hall of Fame; provides for consultation with local officials; authorizes authority to apply for and obtain pari-mutuel wagering permit; provides for distribution of revenues; provides for employees, etc. Similar to **SB 1244** (Casas, R-Dade)

### **HB 820 Department of Health/ Disciplinary Records**

(Kyle, R-Lee) Creates a public record exemption for (1) all information obtained by the Department of Health (DOH) regarding final disciplinary action against a physician taken by a licensed hospital or ambulatory surgical center; (2) all information contained in notification of adverse incidents provided to DOH by physicians and osteopathic physicians; and (3) presuit notices and all information obtained by DOH in connection with its investigation of alleged malpractice claims. Identical to **SB 992** (Clary, R-Panhandle)

### **HB 903 Pawnshop Transaction**

**Records** (Bloom, D-Dade) Requires local law enforcement agencies to transfer information regarding pawnshop and secondhand goods transactions to the Florida Department of Law Enforcement (FDLE) and requires FDLE to create and maintain a database of such transactions. Prohibits FDLE from selling the information without legislative authority and stipulates that the database established by FDLE may be accessed by a law enforcement agency for official investigative purposes only. Also creates a public records exemption for all records relating to secondhand goods acquisitions provided to a local law enforcement agency. Identical to **SB 1128** (Campbell, D-Palm Beach/Broward)

## Senate Bill summaries:

### **SB 4-A Lethal Injection Records**

(Burt, R-Volusia) Creates public records exemption for information that would identify the person prescribing, preparing, compounding, dispensing or administering a lethal injection pursuant to a death penalty sentence. Passed during Special Session A, signed into law by the Governor; Ch.00-1.

### **SB 208 Copyright of Governmental**

**Software** Reenacts § 119.083, F.S., authorizing government agencies to copyright software created by the agency.

### **SB 220 Florida Engineers**

**Management Corporation Act** (Regulated Industries) Provides for meetings of board of directors of Florida Engineers Management Corporation be open to public.

### **SB 318 Domestic Violence/Minor**

**Children** (Rossin, D-South Central) Creates public records exemption for information provided to sheriffs and state attorneys by people who take minor children when fleeing from domestic violence. Identical to **HB 449** (Greene, D-Magnolia Park)

### **SB 368 Extending Lobbying**

**Restrictions on Former Public Agency Employees** (Saunders, R-Lee/Collier) Extends prohibitions against use of certain confidential public information to former officers, employees and local government attorneys.

### **SB 606 Recreating the Public Records**

**Modernization Trust Fund** (Browne-Waite, R-Sumter/Polk/Hernando/Pasco) Extends the life of the Public Records Modernization Trust Fund.

### **SB 836 Account Information/**

**College Savings Program** (Horne, R-Duval/Clay/St. Johns) Creates a public records exemption for information that identifies the benefactors or designated beneficiaries of college savings program accounts. Authorizes release of the exempt information to community

colleges and universities under certain, specified circumstances.

### **SB 884 Entertainment Industry**

**Incentives** (Kirkpatrick, R-North Central) Requires Film Commissioner's Office to keep specified records; provides that exemption for certain motion picture or video equipment and sound recording shall be point of sale exemption rather than by refund.

### **SB 886 Entertainment Company**

**Production Records** (Kirkpatrick, R-North Central) Creates a public records exemption for all business records provided by an entertainment industry production company to the Office of the Film Commissioner for the purpose of receiving sales and use tax exemptions.

### **SB 1108 Public Corruption**

**Investigation Records** (Sebesta, R-St. Petersburg) Creates a public records exemption for records and any subpoena *duces tecum*, warrant or court process, compiled or generated by a criminal justice agency in response to allegations of misconduct or crimes committed by a government official or employee. Stipulates that the investigative records are exempt for a period of three years.

### **SB 1110 Ethics Commission**

**Investigation Records** (Sebesta, R-Hillsborough/Pinellas) Extends the current exemption for investigations of complaints filed with the Ethics Commission [§ 112.324(1) F.S.] to include investigations initiated by the Ethics Commission pursuant to pending legislation.

### **SB 1126 Domestic Violence**

**Prevention** (Myers, R-Hobe Sound) Creates a public records exemption for records obtained or produced by a domestic violence fatality prevention task force. Also creates a public meetings exemption for the proceedings and meetings of the task force regarding domestic violence fatalities and their prevention.

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# Mediation program resolves access disputes

Florida's public access laws are among the broadest in the nation. Florida courts have strengthened the state's tradition of open government through a series of decisions that have liberally interpreted the Sunshine and Public Records Laws. However, disputes and controversies over public records and meetings still occur. When this happens, the open government mediation program conducted by the Attorney General's Office can provide assistance.

The open government mediation program was established to provide a voluntary, informal alternative to resolve public access disputes. Although most mediation cases are initiated by private citizens or journalists, in some cases governmental agencies ask for help in resolving a controversy. The objective is to allow the

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By Pat Gleason

parties to settle their differences in a nonadversarial way. Last year, the program received 99 requests for mediation, and 78 of these were resolved. The disputes involved a wide variety of issues, but the majority were triggered by a citizen's complaint that a public entity had failed to comply with the citizen's public records request. In 17 instances, the controversy resulted from a disagreement over the fees to be charged for copies of public records. Several cases concerned conditions that an agency sought to impose before allowing access to public records, such as a demand to put the request in writing.

Many cases were resolved quickly through a simple phone call. In one example, a media lawyer contacted the Attorney General's Office after a reporter complained that a city personnel department had charged him more than \$100 to redact exempt material from five personnel files. After the Attorney General's Office sent a copy of the invoice to the city attorney, the city attorney furnished the records without charge.

In another case, the mediation process was initiated by a



Pat Gleason

citizen who said she had been unable to obtain a list of members of a school district committee, despite several requests. Once the school district attorney became aware of the citizen's request through the mediation program, the citizen promptly received a copy of the list.

Similarly, a state lawyer had resigned her position but was unable to obtain a computer disc containing the pleadings and other materials she had prepared for closed litigation files. She received the disc — a public record — shortly after the agency's general counsel was contacted about the problem.

Some controversies turn out to be nothing more than misunderstandings. For example, a citizen said that he had been unable to obtain certain financial records from a housing authority. The citizen had sent his request to the city clerk rather than to the housing authority. Once the housing authority was contacted by the mediation program, the citizen received the records.

Other cases involve more complex issues that can take several weeks to resolve. For example, in November 1998 a reporter asked for mediation assistance to obtain copies of complaints against unlicensed dentists from a state agency. After weeks of negotiation with two different agencies, the records were finally released in February 1999.

Mediation remains a viable and cost-effective option for citizens and governmental agencies who are seeking to resolve ongoing public access disputes. The goal of the open government mediation program is to provide an opportunity to settle a controversy outside the courtroom and thereby avoid unnecessary litigation expenses. However, while the cost savings are important, the success of the program ultimately depends on its ability to ensure that citizens obtain access to records and meetings as established under the Florida Constitution and laws of this state.

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*Pat Gleason, general counsel in the Office of the Attorney General, has been conducting the mediation program since 1991. For more information about mediation or to obtain a copy of the 2000 Mediation Report, contact Gleason at: (850) 488-9853.*

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