
THE BRECHNER REPORT

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City sues blogger for requesting e-mail records

HALLANDALE BEACH – Rather than deny a public records request, a South Florida city decided to sue the requester, and a circuit judge ruled for the city.

Hallandale Beach blogger Mike Butler had requested a list of recipients of an e-mail sent by Mayor Joy Cooper on February 17 from her personal e-mail account. The brief e-mail included attachments to columns Cooper wrote for a weekly newspaper and included Cooper's City Hall address and phone number.

According to Butler, the city never

denied his request. Instead, in April it hired a law firm and filed suit against Butler.

Jamie Cole, attorney for the city, said that "the city didn't want to break the law" and therefore wanted a judge's ruling before denying the request, according to the *South Florida Sun-Sentinel* (Fort Lauderdale).

Circuit Court Judge Patti Englander Henning issued a written order stating that the e-mail was "not a public record because it was not created

pursuant to a law or ordinance." Henning, who emphasized that Mayor Cooper paid for her personal account and had other city-affiliated accounts, ruled that even if the e-mail was related to official business, the list of recipients would be irrelevant.

Butler called the ruling "shocking" and contrary to a 2007 opinion of Florida Attorney General Bill McCollum determining that public records include e-mails from public officials "that are intended to communicate, perpetuate or formalize knowledge" of city business.

Source: South Florida Sun-Sentinel

**ACCESS
RECORDS**

Court considers pre-meeting records access

ALACHUA – The 1st District Court of Appeal is considering allegations that the Alachua City Commission violated the Sunshine Law by refusing to release board minutes prior to approving them at a meeting.

Alachua residents Michael Canney and Charlie Grapski brought the suit after their request for minutes of a board that certified a disputed city election was denied. The city commission placed approval of the minutes on a consent agenda, then approved the minutes without making them public or discussing them at the meeting.

Attorney and University of Florida Law School Professor Joe Little represents Canney and Grapski in their appeal of a circuit judge's ruling that because the city later released the records, the lawsuit was moot. Judge Robert Roundtree Jr. also ruled that the city commission can approve items on its consent agenda without allowing public comment.

"Alachua hid the content of what they were doing," Little argued before appellate judges. "The public was left out." Little contends that although the meeting where

the minutes were approved was physically open to the public, it was not truly "open" within the meaning of Florida's Sunshine Law.

The city, represented by Gainesville attorney Rod Smith, argued that city made a mistake in not releasing the records but because they were later released, the lawsuit was moot.

Smith told the judges timing was key, especially because Canney and Grapski had the records at the time the suit was filed.

Source: High Springs Herald

**ACCESS
MEETINGS**

Meetings law faces second free speech challenge

PFLUGERVILLE, Tex. – More than a dozen public officials in Texas have agreed to challenge that state's Open Meetings Act on the grounds it violates their First Amendment rights.

The suit follows one dismissed by the U.S. Court of Appeals for the 5th Circuit in *Rangra v. Brown* as moot. That suit involved officials in Alpine, Texas, who were indicted after e-mail correspondence about a pending water project. Those charges were later dismissed.

The Texas law makes it illegal for a quorum of members to deliberate in private, with penalties of up to six months in jail and a \$500 fine. Other states, such as Florida, do not require a quorum for the Open Meetings Law to apply.

The suit seeks "to declare unconstitutional the criminal provision that says that council members can't talk to each other except at a meeting," said Rod Ponton, who represents the 15 elected officials who agreed to challenge

the law.

"Jail time is not the least restrictive means of promoting open government," said Scott Houston of the Texas Municipal League. That organization filed a "friend of the court" brief in the *Rangra* case.

Several state attorneys general, including Florida Attorney General Bill McCollum, filed an amici brief warning that applying strict scrutiny to open meetings laws would "practically cripple the operation of those laws" and conflicts with U.S. Supreme Court opinions.

Source: Austin American-Statesman

**FIRST
AMENDMENT**

County housing agency disputes city counterpart's records fees

ST. PETERSBURG – A county housing authority has complained to prosecutors about its city counterpart, alleging a violation of the Open Records Law. The Pinellas County Housing Authority has requested records from the St. Petersburg housing agency over the past two years.

More than 17,000 e-mails and records since October 2007 are involved in the request. The city housing agency wants in excess of \$19,000 to fulfill the records requests. A county attorney calls the

city agency's response a "gross violation of both their constitutional and statutory duties."

The St. Petersburg housing agency estimates it will take a supervisor 20 hours per week for several months, at the rate of \$29 per hour, to review the records at issue.

The city and county housing agencies previously worked together, including plans at one point to have joint headquarters.

Source: *St. Petersburg Times*

Building department records purge leaves files in dumpster

BUNNELL – Several boxes of records containing sensitive information landed in a Flagler County dumpster after the building department purged its files.

Palm Coast resident Jean Fontana found the documents in the dumpster and alerted authorities and local media. County Administrator Craig Coffey said within 24 hours of being trashed, the applications, deeds, notices and plans were secured.

"Unfortunately, this same information still exists in the county's official records online," Coffey wrote in an online forum. "Hence, they are viewable with any computer, forget the Dumpster."

But state law requires that all sensitive information be removed from electronic records by January 2011, leaving county clerks with the daunting task of ensuring millions of documents are redacted.

Flagler County Clerk of Court Gail Wadsworth said if the task of redacting documents, which began last year, wasn't complete by the deadline, the official records Web site would be shut down.

The Flagler building department purges its files every 10 years. The employees who discarded the records were verbally reprimanded.

Source: *The Daytona Beach News-Journal*

Town manager loses job after employee SSNs released on CD

LADY LAKE – A town manager was terminated after the inadvertent release of a CD with the Social Security numbers of 99 town employees.

Bill Vance was the town manager of Lady Lake since 2004 before being fired by the town commission.

The termination stems from a public records request by Mike French, who requested more than 100,000 town e-mails after being denied a job with the Lady Lake Police Department. French alleges he didn't get the job due to age discrimination and requested records to support his claim.

Lady Lake employees mistakenly gave French a CD with the Social

Security numbers while fulfilling his public records request. Lady Lake requested that French return the CD, but he refused.

"Under the direction of my attorney, I placed the three CDs into a safe deposit box and have not shared, copied or forwarded any of the files contained therein," French wrote commissioners. "These discs will remain in my custody until this matter is successfully resolved."

Also affected by the release was Human Resources Director Guy Shields, whom Vance had suspended for 30 days without pay.

Source: *Orlando Sentinel, The Daily Commercial (Leesburg)*

Brechner.org

Visit *The Brechner Center's Web site for more information about media law in Florida. You can find:*

- How Florida lawmakers voted on open government issues.
- A history of open government prosecutions and attorney's fees awards in the state.
- Sample public records request letter.
- The Citizen's Guide and video overview.

Investigation prompts new e-mail policy

MILTON – Santa Rosa County commissioners have adopted a new e-mail policy based on the recommendations of a State Attorney's Office report.

The new policy prohibits the use of private e-mails to conduct county business. It also encourages commissioners to avoid e-mail communications with each other and put a disclaimer on e-mails to other commissioners warning against a response.

All e-mails received by commissioners should also be automatically copied to the county for retention on its server.

County Administrator Hunter Walker said the new policy for elected officials supplements the existing employee e-mail and Internet policies. Walker said Santa Rosa's new policy is similar to one recently adopted by Escambia County.

The State Attorney's investigation was prompted in part by e-mail correspondence between commissioners Gordon Goodin and Bob Cole regarding the Regional Transportation Authority. The investigation determined that exchange was "troubling" but not a violation of the Open Meetings Law.

Source: *Pensacola News-Journal, Northwest Florida Daily News (Fort Walton Beach)*

THE BRECHNER CENTER

2009 FREEDOM OF INFORMATION REPORT

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Venice ordered to pay record attorney fee award

VENICE – The city of Venice has been ordered to pay more than \$775,000 in legal fees in connection with an open government lawsuit filed last year by a citizen activist, the largest fee award in an open government case.

Anthony Lorenzo, of the nonprofit Citizens for Sunshine, alleged violations of the Public Records and Open Meetings Laws by members of the Venice City Council.

The violations centered on the use of private e-mail accounts to discuss city business.

Lorenzo and the city settled the suit in March 2009, but attorney fees remained a sticking point, and in September, Judge

Robert Bennett presided over a hearing on the legal fee issue. Brechner Center Executive Director Sandra F. Chance served as an expert witness at the hearing.

Lorenzo's attorneys sought a multiplier that could have resulted in fees of more than \$2 million, but Bennett denied the request. He also denied legal fees for the time spent since the settlement litigating the attorney's fee issue, citing a lack of authority in Florida law.

Federal rules permits these types of attorney fee awards, and Bennett noted

that such a system "would clearly promote involvement in public interest cases by lawyers who might be unwilling to become involved in this type of litigation knowing that substantial time and energy may be expended in litigating their own fees."

Lorenzo was represented by Andrea Mogensen and the law firm Carlton Fields.

The city will also have to pay its own legal bills in excess of \$600,000. The city's liability insurance only covers \$10,000 of those fees.

Mogensen said she would not appeal.

Source: Sarasota County Circuit Court, Sarasota Herald Tribune

ACCESS
MEETINGS

Open government reform panel issues report

TALLAHASSEE – The Commission on Open Government Reform released its final report of recommendations for reforming Florida's open government laws. The nine-member commission was created by Gov. Charlie Crist in June 2007 to review, for the first time, the state's public records and public meetings laws in their entirety.

Among the issues addressed in the report were the number of redundant

exemptions within the laws, challenges to access posed by new technology and the use of excessive fees under the general fee provision of the records law for public records requests.

Among the recommendations, the commission called on the legislature to create universal exemptions that apply to all agencies and repeal redundant exemptions.

Also, the commission recommended

the legislature create new legal standards for electronic records to facilitate public access and reduce the cost of redaction to such records. The commission also recommended all agencies create a process for public access to public record e-mail.

The report is available through the governor's Web site at http://www.flgov.com/og_home.

Source: Commission on Open Government Reform Final Report

NCAA loses bid to keep discipline records secret

TALLAHASSEE – The 1st District Court of Appeal has ruled that the records received by Florida State University attorneys via a National Collegiate Athletic Association (NCAA) Web site are public records.

A hearing transcript and an NCAA response to FSU's appeal of penalties proposed by the NCAA were the documents requested by several media organizations. The university also sought public disclosure of the documents.

ACCESS
RECORDS

The documents were accessed by lawyers representing FSU in the dispute via a password-protected Web site that was maintained by the NCAA. The disciplinary action stems from allegations of cheating among student athletes.

The court reasoned that because "the documents at issue in this case were examined by lawyers for a public agency . . . and used in the course of the agency's business" they are public records under Florida law.

The NCAA argued that viewing of

a document by a state agent does not equate to "receiving" the document under Florida's Public Records Law. "If it was received, that is enough," Judge Philip J. Padovano wrote for the court.

The NCAA also cited the Family Educational Rights and Privacy Act (FERPA) as reason to keep the documents secret, but the court ruled that the disciplinary documents did not fall under FERPA's definitions of student records.

The NCAA has appealed to the Florida Supreme Court.

Source: 1st DCA, The Associated Press

Facebook, settlements among AGO topics

TALLAHASSEE – Attorney General Bill McCollum’s office weighed in on several open government issues in 2009, ranging from city Facebook pages to litigation strategy sessions where a municipality is not a named party but would be a real party in interest. Below are summaries of these Florida Attorney General Advisory Legal Opinions. McCollum’s office also issued six informal opinions on open government issues in 2009.

Access to discrimination complaint: Does the Public Records Law require disclosure of a discrimination complaint when the alleged victim has withdrawn the complaint and requested confidentiality as part of a settlement with the agency?

AGO 2009-10: Yes. The Public Records Law contains an exemption for employment discrimination complaints where the individual decides not to pursue the complaint. However, when an individual proceeds to negotiate a settlement of that claim, it would be unreasonable to interpret that action as choosing not to pursue the complaint. Also, the Legislature has been clear that with few exceptions, confidentiality portions of settlements are void as against public policy.

Conflict resolution, closed sessions: Does the Open Meetings Law authorize a city council to meet in executive session to consider the terms of mediation undertaken pursuant to the conflict resolution procedure set forth in the Florida Governmental Conflict Resolution Act?

AGO 2009-14: No. The FGCRA allows for civil proceedings between governmental entities to be put hold while conflict resolution is pursued according to the procedure prescribed by the Act. The Open Meetings Law contains an exemption for settlement negotiations or attorney-client strategy sessions related to pending litigation. Discussions between the city attorney and the city commission related to a settlement of a conflict under the FGCRA would not fall under a strict reading of the Open Meetings exemption.

Litigation strategy session: May a city hold an attorney-client session under the Open Meetings Law to discuss pending litigation where the named

defendant is a city employee who is fully indemnified by the city and the city is responsible for the full cost and coordination of the defense, but the city is not a named party?

AGO 2009-15: Yes, if the city is a real party in interest of a pending lawsuit it may conduct such a session even though it is not a named party in the litigation.

Municipal Facebook page: Would a city’s Facebook page, including information about the city’s “friends” and their pictures, and the friends’ respective Facebook pages, be subject to the Public Records Law? Is the city obligated to follow a public records retention schedule for Facebook page records? Is Florida’s Constitutional Right of Privacy implicated by the inclusion of information about the city’s “friends” and the respective link to the friends’ Facebook pages linked to the

city’s page? Would communications on the city’s Facebook page regarding city business be subject

to Florida’s Government in the Sunshine Law?

AGO 2009-19: A city may create a Facebook page in furtherance of a municipal purpose. The material on the page would presumably be subject to the Public Records Law if it was made or received in connection with official business, and the city would be obligated to follow public records retention schedules. The constitutional privacy provision specifically states that it “shall not be construed to limit the public’s right of access to public records and meetings as provided by law.” Finally, city board or commission members must not engage in communications on a city Facebook page on matters that foreseeably will come before the board or commission for official action.

Access to crash reports: Is Escambia County entitled to receive crash reports from law enforcement agencies at the scene of a motor vehicle accident pursuant to Escambia County’s motor vehicle accident cost recovery fee ordinance?

AGO 2009-22: No. Crash reports are confidential for 60 days after filing, although the reports are available immediately on a limited basis to statutorily enumerated individuals and entities, such as parties to the crash, insurers, attorneys, prosecutors and

newspapers. There is no statutory exception for counties, and Escambia does not have the authority to create such an exception by local ordinance.

Emergency medical records: Pursuant to sections 401.30(3) and (4), Florida Statutes, is the entire record of an emergency call which contains patient examination and treatment information confidential and exempt from the provisions of section 119.07(1), Florida Statutes?

AGO 2009-30: Yes. The record of the emergency call (such as a form used to maintain records of emergency calls) is exempt from the Public Records Law per 401.30(4), Florida Statutes, and may only be released under limited circumstances. However, Department of Health statistical reports are public records once any patient-identifying information is redacted.

Pre-suit notice period not pending litigation: May a town council which has received a pre-suit notice letter under the Bert J. Harris Act conduct a closed meeting pursuant to section 286.011(8), Florida Statutes, to discuss settlement negotiations?

AGO 2009-25: No. The Harris Act governs claims by property owners that a law inordinately burdens their property and includes steps that governmental entities must take to settle a claim after it receives pre-suit notice. The Open Meetings Law permits confidential meetings between a board and its attorney only when the board is party to a court or administrative agency proceeding. At the time pre-suit notice is given, the town council is not a party to an action and therefore may not conduct a closed meeting.

Confidentiality of assessment tests: Are student assessment tests, developed by teachers to measure student preparedness for college board advanced placement exams, public records subject to inspection and copying under Chapter 119, Florida Statutes?

AGO 2009-35: Section 1008.23 exempts development materials related to testing but does not explicitly exempt tests related to preparedness for advanced placement exams. However, the plain language of the statute and common sense indicate that if the exemption didn’t apply, a student could simply make a public records request for the blank test. The assessment tests appear (*cont’d. on pg.3*)

ATTORNEY
GENERAL OPINIONS

Gov. Crist vetoes two public records exemptions

TALLAHASSEE – The following is a summary of the nine Public Records and Open Meetings Law exemptions enacted in 2009. However, two exemptions—one for telecommunication company records and one for information about donors to public buildings—were vetoed by Gov. Charlie Crist. Chief sponsors of the bills are in parentheses at the end of the summaries. Copies of the legislation in full are available at the Florida Legislature’s Web site (www.leg.state.fl.us). *SB* = Senate Bill; *HB* = House Bill; *CS* = Committee Substitute.

HB 7093 Telecommunications and Broadband Companies: Creates a public records exemption for proprietary confidential business information obtained from telecommunications companies and broadband companies by the Department of Management Services. Exempted information includes plans, billing and payment records, trade secrets or other information that is intended to be confidential and is not otherwise publicly available in the format held by the department. Information related to maps, facility locations, broadband services and speed is not proprietary. (H. Economic Development Community Affairs Policy Council) **Vetoed by Gov. Crist June 24.**

HB 7119 Education Records: Creates a public records exemption for K-12 education records held by an agency, public school, center, institution, or other entity that is part of the state’s education system. The bill also expands an exemption for records of students in public postsecondary educational institutions including education records and applicant records. (H. Education Policy Council) **Signed by Gov. Crist June 24.**

HB 7125 Military Base Closures: Creates a public records exemption for portions of records held by the Florida Council on Military Base and Mission Support on U.S. Department of Defense Base Realignment and Closure Activities related to 1) strengths and weaknesses of military installations or missions; 2) selection criteria for realignment and closure of military bases and missions; 3) Florida’s strategy to retain military bases during federal base realignment and closure procedures; 4) agreements or proposals to relocate or realign military units of missions. Also creates a public meetings exemption for council meetings at which exempt information is presented

or discussed. (H. Economic Development & Community Affairs Council) **Signed by Gov. Crist June 10.**

SB 166 Donors to Public Buildings: Creates a public records exemption for the name, address and telephone number of donors or prospective donors to publicly owned buildings or facilities if the donor desires to remain anonymous. (Ring, D-Margate) **Vetoed by Gov. Crist June 24.**

SB 2158 Florida Insurance Guaranty Association: Creates a public records exemption for records held by the Florida Insurance Guaranty Association: 1) claims files until the end of litigation, settlement and final closing of all claims related to the incident; 2) medical records and information relating to the medical condition or status of a claimant; and 3) records privileged by attorney-client communications. (Haridopolos, R-Melbourne) **Signed by Gov. Crist June 16.**

CS/HB 135 Insured Dependents: Creates a public records exemption for the personal identifying information of insured dependents of current and former agency employees insured by an agency group insurance plan. (McKeel, R-Lakeland) **Signed by Gov. Crist June 1.**

CS/HB 631 Estate Inventories and Accountings: Creates a public records exemption for estate or elective estate inventories and accountings filed in an estate proceeding. The records may be disclosed in specific circumstances including under court order upon showing good cause. (Hukill, R-Port Orange) **Signed by Gov. Crist June 24.**

CS/HB 895 School Testing Investigations: Creates a public records exemption for the identity of an educational institution, the personal identifying information of all personnel and records of misconduct obtained or reported in connection with investigating testing impropriety by the Department of Education. The records are exempt until the investigation concludes or becomes inactive. (Roberson, R-Port Charlotte) **Signed by Gov. Crist June 10.**

CS/SB 440 Controlled Substances Database: Creates a public records exemption for information and records

reported to the Department of Health via the electronic prescription drug monitoring program. The exempted identifying information of patients, health care providers, pharmacists and employees of practitioners includes the name, address, telephone number, insurance plan number, social security number, provider number, Drug Enforcement Administration number, and other unique identifiers. (Fasano, R-New Port Richey) **Signed by Gov. Crist June 18.**

Source: First Amendment Foundation, <http://www.flsenate.gov> and <http://www.myfloridahouse.gov>

AG OPINIONS CONTINUED

to be exempt, but the Legislature may wish to clarify the issue.

Disposition of public records: What is the proper disposition of public records of a municipal services taxing and benefit unit that has been replaced by an independent special district by special act of the Legislature?

AGO 2009-39: The Public Records Law requires records be kept in the buildings where they are ordinarily used; it also has a provision calling for a records custodian to deliver public records to her successor. This is analogous to a public entity which has been abolished by the Legislature. Therefore, the defunct unit should deliver the public records to the records custodian of its successor.

Attendance at settlement meetings: May attorneys representing a superintendent of schools in an administrative action before the Department of Administrative Hearings meet with the school board to discuss settlement of the administrative proceeding pursuant to section 286.011(8), Florida Statutes?

AGO 2009-52: No. The Open Meetings Law has a limited exception for litigation strategy or settlement discussions between a school board as a named party in an administrative action and the board’s attorney. The attorneys representing the superintendent do not fall within this exception.

Half of sheriffs fail records audit

TALLAHASSEE – Forty-three percent of government agencies failed to comply with the Public Records Law, according to a statewide audit.

During the Florida Society of Newspaper Editors' audit, reporters and student volunteers requested records from 163 school, administrative and sheriff's offices in 56 of Florida's 67 counties.

The individuals asked each office to produce copies of e-mails created in preparing the 2008-2009 fiscal-year budgets.

If the agencies claimed there were no e-mails on the issue, the individuals asked for the latest correspondence or written

records on the budget.

The failing agencies either could not produce a reasonable record, or they required requestors to submit written requests or give their names or reasons for wanting the records.

Sheriff's departments were the worst at complying. Almost 60 percent failed.

The audit would normally have been conducted in March 2009 during Sunshine Week, but it was moved to October 2008 because of Gov. Charlie Crist's open-government commission's release of recommendations for the 2009 session.

Source: Bradenton Herald, Naples Daily News, and Orlando Sentinel

Court: Digital audio is open

TALLAHASSEE – A proposal to restrict disclosure of digital recordings of court proceedings was rejected by the Florida Supreme Court, which called the proposal "overly restrictive and . . . contrary to Florida's well established public policy of government in the sunshine and [the]

ACCESS RECORDS

Court's longstanding presumption in favor of openness

for all court proceedings and allowing access to records of those proceedings."

The Commission on Trial Court Performance and Accountability had recommended that "electronic records, videotapes, or stenographic tapes of court proceedings" be deleted from the definition of "court records" in the Florida Rules of Judicial Administration.

The proposed change would have severely restricted disclosure of electronic records. To address concerns of courtroom recording systems capturing confidential conversations between attorneys and clients, a new rule requires court personnel to notify participants when courtroom proceedings are being recorded; attorneys must take precautions to prevent disclosure of confidential communications; and "[p]articipants have a duty to protect confidential information."

The Court's decision followed the May 2009 decision of the 2nd District Court of Appeal denying Media General Operations, Inc., publisher of *The Tampa Tribune*, access to an audio recording of a sentencing hearing.

The 2nd District concluded that the written transcript of the hearing provided by the 6th Judicial Circuit was sufficient and that the actual audio recording was not an "electronic record" as defined in the Florida Rules of Judicial Administration.

Media General has requested the Court review the 2nd District's decision.

Source: floridasupremecourt.org

Doctor wins defamation lawsuit

ST. PETERSBURG – A doctor who alleged he was defamed in three *St. Petersburg Times* articles has been awarded \$10.1 million in damages. Dr. Harold L. Kennedy, former chief of medicine at Bay Pines Veterans Affairs Medical Center, sued Times Publishing Co., the *Times*' parent company, in 2005.

Kennedy alleged that three December 2003 articles about his reassignment from his position as chief of medicine damaged his reputation and were defamatory. The newspaper argued that the published information was true.

The author of the articles, Paul de la

Garza, died in 2006. The *Times* tried to use his notes to defend its case, but the judge did not allow them in the trial.

Kennedy, who now lives in St. Louis, was awarded \$5.1 million in compensatory damages and \$5 million punitive damages.

Times Executive Editor and Vice President Neil Brown was "very disappointed" by the jury's decision and stood by the paper's work. "We believe our reporting and editing of these stories met the highest journalistic and ethical standards," Brown said, according to the *Times*.

Source: St. Petersburg Times

LIBEL

Texas meeting challenge moot

NEW ORLEANS – A First Amendment challenge to Texas' Open Meetings Law is moot, according to a ruling by the 5th Circuit Court of Appeals. The full court dismissed the case, brought by former Alpine, Texas, city council members who allegedly violated the Open Meetings Law when they discussed city business via private e-mails.

A federal district court judge upheld the Open Meetings Law, finding that elected officials are not afforded First Amendment protection when acting "pursuant to their official duties."

However, a three-judge panel of the 5th Circuit overturned that decision in April 2009, directing U.S. District Court Judge Robert Junell to determine whether the Texas Open Meetings Act passed the strict

scrutiny test. Under this First Amendment test, a law must further a compelling government interest and be narrowly tailored in order to be constitutional.

Attorneys general in several states, including Florida, urged the full 5th Circuit to hear the case after the panel's April ruling, fearing the decision could set the stage for many

state Open Meetings Laws to be struck down. The Alpine council members also requested a rehearing.

The en banc rehearing of the case resulted in 16 judges deciding the case was moot. Judge James L. Dennis argued in a dissenting opinion that the case should have been heard because it was an issue likely to come before courts in the future.

Source: Reporters Committee for Freedom of the Press, Rangra v. Brown

FIRST AMENDMENT

Hospital board target of suit

CITRUS COUNTY – The *Citrus County Chronicle* filed suit against a hospital board alleging Sunshine Law violations, but the board’s attorney quickly admitted the mistake and offered to pay the plaintiffs’ attorney fees.

The newspaper and the wife of a local physician filed the suit, alleging that the Citrus County Hospital Board illegally held two private meetings to discuss a potential lawsuit. Hospital board attorney Bill Grant said the Sept. 10 meeting occurred but the board did not vote, and the Oct. 12 meeting did not take place.

Florida’s Sunshine Law exempts discussions about pending litigation that has already been filed.

“We absolutely made a mistake,” Grant said. “Taxpayers won’t be paying attorney’s fees. We’ll pay every damn dime,” he added.

Gerry Mulligan, publisher of the *Chronicle*, said he appreciated Grant’s response. The newspaper’s lawsuit sought to have any actions taken by the board during the closed meetings nullified.

Prior to learning of the hospital’s response, Mulligan noted repeated instances of closed meetings. “We want this clarified,” Mulligan said. “We don’t think any branch of government should be making decisions behind closed doors.”

Source: *Citrus County Chronicle*

New software adoptions aim to improve access, efficiency

Government entities across Florida are looking to new technology to help streamline recordkeeping and increase public access.

In Pompano Beach, the city commission approved initial funding of \$14,000 to purchase hardware, software and training that will enable the city to stream meetings on the web. Another \$900 has been designated for monthly production of the meetings.

“In today’s society, people want fast and convenient service. From computers to cell phones, web streaming falls in with immediate access to information in the convenience of your own home,” said Pompano Beach public information officer Sandra King. “It’s easier than ever to stay informed and get involved with your local government.”

In Bradford County, commissioners have agreed to purchase software that will unify the records system across law enforcement agencies, the clerk’s office, the jail, the State Attorney’s Office and the courts.

Bradford Sheriff Gordon Smith, a proponent of implementing SmartCOP from CTS America, said the goal is to enhance access to information by all agencies and reduce time spent entering data multiple times in different offices.

“We’ve got to have something more efficient and a whole lot less expensive,” Smith said. The new software will cost \$68,000 initially and \$39,000 per year thereafter. The current system, which Smith says is not fully utilized, costs \$71,000 annually.

Court clerks are also implementing software changes to comply with new e-filing requirements. The new system will allow attorneys to file documents online.

“These days we’re all having to do more with less,” said Duval County Clerk Jim Fuller. “Our world is becoming increasingly electronic and many of our clerks have been at the forefront of that trend by piloting programs within their circuits.”

In Marion County, electronic records access was recently expanded with the launch of an expanded “Extranet.” For \$150 per year, law firms and state agencies (but not the general public) can view civil and criminal files dating back to 2003. Marion County hopes its current digitizing plans will help it meet the March 2010 deadline for Florida clerks to implement e-filing.

Source: *Pompano Pelican, Bradford County Telegraph, Florida Bar News, Ocala Star-Banner*

Agency refutes Sunshine coverage

NICEVILLE – A state senator has formally requested the Attorney General’s advice on whether a panhandle economic agency falls under the Sunshine Law. Sen. Don Gaetz (R-Niceville) called Florida’s Great Northwest “a valuable, important organization” and said the request was an effort to obtain clarity “so none of its good work can be undercut by Sunshine Law violations.”

Florida’s Great Northwest maintains that it is a private, nonprofit organization exempt from the Open Meetings Law. The majority of Florida’s Great Northwest’s \$4 million budget comes from taxpayer funds.

The Destin-based group’s mission is to encourage economic development across 16 counties in the Florida panhandle. It works with various county economic development agencies and distributes

millions in grant money. Most of the grant money comes from a \$15-million grant from the U.S. Department of Labor.

A similar organization in northwest Florida, TEAM Santa Rosa, was recently the subject of a State Attorney’s investigation regarding its Sunshine Law obligations. Like Florida’s Great Northwest, the nonprofit TEAM Santa Rosa’s focus is to increase economic development.

State Attorney Bill Eddins concluded that because TEAM Santa Rosa conducted business on behalf of a public entity, it was subject to the Open Meetings Law. Eddins declined to pursue any civil or criminal penalties against TEAM Santa Rosa.

Source: *The News Herald (Panama City)*

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Brechner Center for Freedom of Information
3208 Weimer Hall, P.O. Box 118400
College of Journalism and Communications
University of Florida, Gainesville, FL 32611-8400
<http://www.brechner.org>
e-mail: brechnerreport@jou.ufl.edu

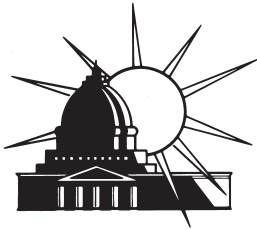
Sandra F. Chance, J.D., Exec. Director/Exec. Editor
Christina M. Locke, Editor
Alana Kolifraith, Production Coordinator

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3208 Weimer Hall, P.O. Box 118400
Gainesville, FL 32611

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My two cents (per copy): FOI should be nearly free

When the nonprofit Mackinac Center for Public Policy wanted copies of documents from the Michigan state police regarding federal Homeland Security expenditures, the police were happy to comply.

For \$6,876,303.90.

That was the bill, sent to the Mackinac Center in November, to cover search and copy fees. Mailing would cost extra. The \$7 million request isn't an isolated incident. I often hear from journalists who are told it will cost millions of dollars for copies. Agencies nationwide are jacking up copy fees, charging 50 cents a page or more, to make up for budget deficits.

Enough already! Corporatizing freedom of information is wrong. Exercising one's right to learn about government should never be turned into a profit center. Citizens should not stand for it.

The Back Page

By Dave Cuillier

About 35 states allow officials to charge for the *actual* cost of photocopies, or a *reasonable* fee. Some states specify a fee (e.g., Florida's provision for 15 cents per page with no staff time charged). Those are great policies. Unfortunately, some agencies go beyond the actual cost and what is reasonable.

So what's reasonable? In my opinion:

- The actual cost of photocopies. Add paper (.7 cents per page based on a box of paper from Office Depot), machine depreciation (.2 cents per page based on a Xerox WorkCentre 5225 that costs \$4,299 and produces 75,000 copies a month), and toner (.6 cents per page), and you get 1.5 cents per page. Call it an even 2 cents per page and the agency is still making a 25 percent profit margin.

- The cost of someone to retrieve and copy the files for onerous requests. Searches that take less than an hour should be free. After that, charging \$10 an hour seems fair (college students will work for less). It's great that Florida and a few other states charge nothing for staff time, but that practice is a hard sell in most places, and a backlash against harassing, overly broad and frequent requests is leading to legislative proposals that limit requests, increase fees and close records. We need a sense of fair play on both sides.

Covering the actual cost – and no more – for records requests is reasonable. Exorbitant copy fees should not be tolerated.



Dave Cuillier

Freedom isn't free, but freedom of information should be as nearly free as possible!

Tips for reducing copy fees

1. Narrow the request.
2. Don't ask for copies. Look at the documents for free.
3. Take photos or use a portable scanner (about \$100)
4. Ask for electronic files on CD or e-mailed for free.
5. Ask the agency for an itemized list of expenses to justify the costs.
6. Question high staff search fees – \$100 per hour is equivalent to paying someone \$208,000 a year.
7. Request to see a copy of the contract the agency has with a copy company. My employer pays a company less than a penny (.9 cents) per page to provide the machine, service it and refill the toner.
8. Survey local agencies to compare typical costs and expose the unreasonable.
9. Survey citizens to find out what they consider reasonable. Most people will say 10 or 15 cents. If a profit-oriented store can charge that, then surely a non-profit public agency can charge less.
10. If the unreasonable charge is for computer programming, call the company that makes the software and ask them if copying data should be time consuming. They often say it takes a few minutes.
11. Publicize the unreasonable copy fees. Find out if an agency provides free copies to lawyers or commercial requesters but overcharges citizens. Interview elected officials and average people.
12. Team with other requesters to share the bill.
13. Ask an ombudsman or state attorney general to talk sense into the agency.
14. Sue or lobby for laws specifying reasonable fees.

David Cuillier, Ph.D., former journalist and current journalism professor at the University of Arizona, is chairman of the Society of Professional Journalists' Freedom of Information Committee. He is co-author with Charles Davis of "The Art of Access: Strategies for Acquiring Public Records," and posts tips on the SPJ FOI FYI blog at <http://blogs.spjnetwork.org/foi/>.