
THE BRECHNER REPORT

Volume 29, Number 10 ■ 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
October 2005

Report reveals nature of federal FOI requests

WASHINGTON – A majority of the public records requests made under the federal Freedom of Information Act are not made by the news media, according to a recent report.

After requests reached an all-time high in 2004, the study, which was conducted by the Coalition of Journalists for Open Government, concluded that most requests are from individuals seeking personal information from the Department of Veterans Affairs, the Department of Health and Human

Services and the Social Security Administration.

For example, the Social Security Administration received more than 1.8 million requests from individuals seeking their own Social Security records. The report concluded that requestors who seek their own information are likely to get a positive response in a timely fashion.

Responses for requestors who seek non-personal information from other

agencies are often less timely. The report concluded that those requests are fulfilled only 66 percent of the time.

An administrative appeal of an agency's denial of records is also unlikely to come out favorably for a requestor, according to the report. While the State Department granted appeals almost 60 percent of the time, the Justice Department ruled in favor of an appeal in only 6 percent of cases.

FREEDOM OF INFORMATION

Appeals court allows SI reporter to maintain confidential source

BIRMINGHAM, Ala. – A reporter for *Sports Illustrated* will not have to reveal the name of his confidential source, according to the U.S. Court of Appeals for the Eleventh Circuit.

But, the Alabama shield law under which journalist Don Yaeger sought protection does not apply to magazines, according to the three-judge panel.

That law is limited to newspapers, television stations and radio broadcasting.

However, the judges relied on the First Amendment to provide Yaeger with a qualified privilege to maintain the

confidentiality of a source who provided information for a story Yaeger wrote about former Alabama football coach Mike Price's sexual relationship with two dancers he met at a Florida strip club.

The judges wrote that the First Amendment requires that reasonable efforts be made to discover the information through alternative means before a journalist is compelled to reveal information.

Price wanted the name of the source to obtain information for his pending defamation suit against the national sports magazine.

SHIELD LAWS

Officials cleared in meetings case

NORTHPORT – Three North Port city commissioners and the city's attorney did not violate the Sunshine Law, according to a police investigation.

Former City Commissioner Joseph Fink claimed they violated state statutes and the state's Open Meetings Law when they discussed abandoned lots in meetings and an executive session in December 2004.

An investigation by the North Port police found no wrongdoing.

The officials didn't act with criminal intent, according to Sgt. Ed Fitzpatrick.

"The people responsible for correctly conducting the city's business were acting under the guidance of legal counsel, and believed their actions were within legal bounds," Fitzpatrick said.

ACCESS MEETINGS

Pro golfer claims Jacksonville paper defamed him

JACKSONVILLE – Professional golfer John Daly sued *The Florida Times-Union*, claiming that a column in the newspaper defamed him.

Daly asserts that columnist Mike Freeman's article, which appeared during

The Player's Championship in March 2005, contained libelous

statements that Daly was a thug who abused women.

The lawsuit, which was filed in Duval County Circuit Court, seeks an unspecified amount of damages in excess of \$15,000 and requests a jury trial in the matter.

Times-Union editor Pat Yack defended Freeman and his March column.

The lawsuit names *The Times-Union*, its Web site Jacksonville.com, its parent company Morris Publishing Group and Freeman personally.

The newspaper ran a clarification in July, explaining that Daly had been charged in 1992 with domestic violence and pleaded guilty to a lesser charge of harassment.

LIBEL

Judge allows sheriff to subpoena Internet records

TAMPA – A judge ruled that the Hillsborough County Sheriff's Office can subpoena the records of a Web site in an attempt to determine which of its deputies anonymously posted comments.

Luke Lirot, an attorney for the Web site, said he will fight the subpoenas.

"We will probably move to take whatever steps are appropriate to protect the identity of the people who are

posting on the Web site," he said. "If they choose to do so – express their opinions and remain anonymous – that is their fundamental right."

Judge William Levens ruled that www.leoaffairs.com could be subpoenaed to gain access to the Internet Service Provider addresses used to access the site. With those addresses, the Sheriff's Office could approach ISPs to link the

addresses to specific deputies.

Lirot said he believes the First Amendment will protect the officers who have chosen to post comments on the Web site.

Sheriff David Gee said the office has valid reasons to identify the deputies.

One message bragged about using a Taser-type stun gun to force a confession from a black suspect, he said.

Former coach initiates lawsuit against FAMU

TALLAHASSEE – Former Florida A&M University football coach Billy Joe initiated a public records lawsuit against the school in an attempt to gain access to documents related to his firing.

Joe's attorney argued that he has a right to know what evidence the university considered when making the decision to terminate his contract.

Joe compiled an 86-46 record during his 11 years at the university.

He and two assistants were fired in June, with university officials claiming the termination was related to NCAA rule violations for player recruiting and eligibility standards.

FAMU was stripped of two conference titles in 2000 and 2001 after an investigation uncovered more than 190 NCAA violations throughout the university's athletic programs.

County readies to wage battle against personal information in online records

MANATEE – Manatee County court officials will begin wading through millions of electronic court records to remove Social Security numbers and other sensitive personal information in the hope that they are once again allowed on the Internet.

Circuit Court Clerk R.B. "Chips" Shore and his staff will use a software program to redact portions of the records they are sorting through. They will be among the first in the state to use this method for redaction of electronic records, according to the Florida Association of Court Clerks.

Although online access to records in Manatee County was suspended in March 2004 after the Florida Supreme Court issued a moratorium while a committee studied the issue, Shore said he hopes that the redacted records can be made available for electronic viewing on terminals in his office.

He said he estimates the process of going through back records will take about four months to complete.

However, the office has no plans to examine microfilm records, which pre-date 1978.

ACCESS COURTS

Documents sealed in trial of teens accused of killing homeless man

DAYTONA BEACH – Circuit Judge Joseph Will authorized gag orders in the cases of five teen-agers accused of beating a homeless man.

The order was drafted by attorney Jake Kaney, who represented *The Daytona Beach News-Journal* in the case, and revised by prosecutors and defense attorneys during a court appearance in late August.

Under the agreement, autopsy photos will be sealed until further court action.

Crime-scene photos and defendant statements are subject to court review before they are released.

"All other records are going to be

available for review once they are turned over to the defense (attorneys)," Kaney said.

Assistant Public Defender Mitch Wrenn, who represents one of the five teenage defendants, requested the gag order.

Christopher Scamahorn, 14, Warren Messner, 15, Jeffery Spurgeon, 18, and Justin Stearns, 18, are being held without bail after being charged with murder in the May 25 death of 53-year-old Michael Roberts.

The fifth teen, Phi Huynh, 15, was released on bail pending trial on an aggravated battery charge stemming from the same incident.

DECISIONS ON FILE

Copies of case opinions, Florida 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, P.O. Box 118400, University of Florida, Gainesville, FL 32611-8400, (352) 392-2273.

City desires access to workers' Super Bowl files

JACKSONVILLE—City officials have asked the Jacksonville Super Bowl Host Committee to release records produced for them by four city-paid employees who had been assigned to the nonprofit group.

The committee coordinated efforts and aided the National Football League in staging the 2005 championship game.

Committee co-chairman Tom

Petway responded to a request by the *Jacksonville Business Journal*, stating that the committee, as a nonprofit agency, was not subject to the state's Public Records Law.

When the *Business Journal* requested the records from Jacksonville city officials, they responded by saying that the committee's records were in possession of an attorney with Foley & Lardner LLP, which has an office in

Jacksonville.

However, attorneys at the law firm have denied having access to the evidence.

According to city records, more than \$2.6 million in cash and \$1.9 million in in-kind services were provided by the city to the host committee.

Another \$1.5 million was provided for SuperFest, a public party during the Super Bowl.

Dade judge issues gag order in trial of ex-FBI agent accused of murder

MIAMI—More than 100,000 records in the state's murder case against former Boston FBI agent John Connolly will not be released to the public after a Miami-Dade judge ordered them sealed.

Connolly has been charged with first-degree murder in Florida for the 1982 death of jai-alai executive John Callahan.

Callahan, who was murdered at the Miami International Airport, was reportedly planning to cooperate with authorities investigating corruption.

Local prosecutors asked that the records not be disclosed under an agreement with federal prosecutors in Boston who had previously charged Connolly with racketeering for

protecting Boston's Winter Hill gang and its leaders, James "Whitey" Bulger and Stephen "the Rifleman" Flemmi.

Attorneys for *The Boston Globe* and *The Hartford Courant* argued that the records should be public, as most records turned over to defense attorneys are under Florida law.

Circuit Judge Barbara Areces agreed to seal the records, and her reasoning will remain secret as well.

"If we say what it is, then we say what it is," she said, explaining why her rationale will also remain undisclosed.

Connolly was convicted of other racketeering and obstruction of justice charges. He is currently serving a 10-year prison sentence.

Newspaper wins access to records of child's case

FT. MYERS—A Lee County judge ruled in favor of the *Ft. Myers News-Press*, granting the newspaper access to records from the state's Department of Children and Family Services.

The newspaper requested access to records of E.J., a minor female who was in the custody of DCF.

Judge James H. Seales wrote in his opinion that the newspaper had shown good cause to access the records and that DCF could provide no competent evidence of real harm to the child as a result of the release.

Seales noted the paper would have been allowed by law to attend E.J.'s hearing if the paper had known of it.

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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.

NEWSGATHERING

Miami columnist faces no charges in taping incident with deceased official

MIAMI—Former *Miami Herald* columnist Jim DeFede will not be prosecuted for taping a conversation with former Miami leader Arthur Teele, who later killed himself in the newspaper's lobby.

The ex-commissioner shot himself only hours after his conversation with DeFede.

DeFede has been quoted as saying that he "wanted to preserve the record," after he noticed that Teele, a longtime source, was acting in an unusual manner.

Although taping a conversation without permission is a criminal offense in Florida, DeFede lacked the malicious intent needed for prosecution, according to a memo by Assistant State Attorney Joseph Centorino.

Centorino's memo also noted that it was the unique circumstances surrounding the death that led to his conclusion and that no special journalistic privilege was granted to DeFede, who cooperated with investigators.

DeFede was fired by *The Herald* after he informed his editor of the taping.

Advocates must emphasize accuracy as well as access

As I was sitting in an airport trying to return to Gainesville after spending nearly a week convening with journalism educators from around the nation, I came to an important realization: access to information is important, but access to accurate information is imperative.

I have studied and written about both state and federal freedom of information laws during my law and doctoral studies, but it took a commercial airline to make me realize that not only must the public demand access to information, it must not settle for records and documents that are inaccurate or incomplete.

Under freedom of information laws, government officials have an obligation to disclose information requested by the general public. Reciprocal to that obligation is the responsibility of the public to ensure that information is both complete and accurate.

This obligation falls primarily on attorneys and members of the press, two groups who frequently come into contact with such records. The public, too, has a responsibility to request that government provide all the necessary information to make the information provided meaningful.

Inaccuracies in public records can create problems for law enforcement, the media and even the average citizen. Numerous industries, include credit agencies, rely on public records as they gather information about applicants and make business decisions. Typographical errors, incorrect entries and misidentified persons in records can cause headaches, financial difficulties and even legal problems.

Transposing digits in a Social Security number or failing to include a middle initial has the potential to lead to a variety of troubles from inaccurate credit reports to improper arrests.

Denying public access to records is hardly the solution to this situation. Instead, informing citizens about the existence of public records and how to examine them is the best medicine. After all, most of these problems can be easily corrected with proper oversight by records custodians, attorneys and the individuals about whom the records are maintained.



Amy Sanders

Attorneys, whose daily tasks often include filing court records and examining government documents, should strive to make sure records are complete and accurate. The American Bar Association's Model Code of Professional Conduct expresses this desire by addressing both candor to the courts and truthfulness in communications with others.

Journalists, too, have a responsibility to ensure that the documents they rely upon in their reporting contain information that is believable. Like attorneys, professional journalists also are encouraged by their codes of ethics to engage only in truthful communications. The Society of Professional Journalists Code of Ethics mandates that reporters must seek truth and report it.

And, finally, the members of the public must take responsibility to ensure that their own records are accurate and up-to-date. Under FOIA, individual citizens can request their own information, including Social Security records and other personal files.

Incomplete information also poses a threat to all of us. It has even kept well-known people such as Sen. Edward Kennedy from being able to fly after his name was mistakenly included on the national No-Fly List.

Congress intended the public to be able to verify the accuracy of information the government collects and included provisions in the Privacy Act of 1974 that allow individuals the right to inspect that information.

Individuals may contact an agency's Privacy Act Officer and request copies of their records under the Privacy Act. Inaccuracies in these records may be corrected through an amendment process that allows the requestor to provide proof of the inaccuracy.

The Privacy Act and FOIA work together to ensure access to accurate information. Access to public records is important, but access to accurate and complete information is imperative.

After all, knowing that an airplane was parked at my gate was of little value after I found out the airline had already canceled service to Gainesville for the rest of the day.

Amy Sanders is the editor of the Brechner Report and a Ph.D. student at UF's College of Journalism and Communications. She earned her law degree from the University of Iowa College of Law.