The Missouri Sunshine Law

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I. Legislative History and General Provisions:

A. Federal Sunshine law discussions began in the 1950, with the Federal Freedom of Information Act signed into law on July 4,1966.

B. Missouri's first Open Meetings/Open Records law was passed in 1973. Missouri was one of the early states to have such a law. Its most recent large revision was in 1998, with additional significant changes passed in 2008.

C. Law to be construed liberally (§610.011):

1. It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.200 shall be liberally construed and their exceptions strictly construed to promote this public policy.
2. Except as otherwise provided by law, all public meetings of public governmental bodies shall be open to the public as set forth in section 610.020, all public records of public governmental bodies shall be open to the public for inspection and copying as set forth in sections 610.023 to 610.026, and all public votes of public governmental bodies shall be recorded as set forth in section 610.015.

II. Who is covered by the law?

A. Statutory definition (§610.010 (4)) :

4) "Public governmental body", any legislative, administrative or governmental entity created by the constitution or statutes of this state, by order or ordinance of any political subdivision or district, judicial entities when operating in an administrative capacity, or by executive order, including:

(a) Any body, agency, board, bureau, council, commission, committee, board of regents or board of curators or any other governing body of any institution of higher education, including a community college, which is supported in whole or in part from state funds, including but not limited to the administrative entity known as "The Curators of the University of Missouri" as established by section 172.020, RSMo;

(b) Any advisory committee or commission appointed by the governor by executive order;

(c) Any department or division of the state, of any political subdivision of the state, of any county or of any municipal government, school district or special purpose district including but not limited to sewer districts, water districts, and other subdistricts of any political subdivision;

(d) Any other legislative or administrative governmental deliberative body under the direction of three or more elected or appointed members having rulemaking or quasi-judicial power;

(e) Any committee appointed by or at the direction of any of the entities and which is authorized to report to any of the above-named entities, any advisory committee appointed by or at the direction of any of the named entities

for the specific purpose of recommending, directly to the public governmental body's governing board or its chief administrative officer, policy or policy revisions or expenditures of public funds including, but not limited to, entities created to advise bi-state taxing districts regarding the expenditure of public funds, or any policy advisory body, policy advisory committee or policy advisory group appointed by a president, chancellor or chief executive officer of any college or university system or individual institution at the direction of the governing body of such institution which is supported in whole or in part with state funds for the specific purpose of recommending directly to the public governmental body's governing board or the president, chancellor or chief executive officer policy, policy revisions or expenditures of public funds provided, however, the staff of the college or university president, chancellor or chief executive officer shall not constitute such a policy advisory committee. The custodian of the records of any public governmental body shall maintain a list of the policy advisory committees described in this subdivision;

(f) Any quasi-public governmental body. The term "quasi-public governmental body" means any person, corporation or partnership organized or authorized to do business in this state pursuant to the provisions of chapter 352, 353, or 355, RSMo, or unincorporated association which either:

a. Has as its primary purpose to enter into contracts with public governmental bodies, or to engage primarily in activities carried out pursuant to an agreement or agreements with public governmental bodies; or

b. Performs a public function as evidenced by a statutorily based capacity to confer or otherwise advance, through approval, recommendation or other means, the allocation or issuance of tax credits, tax abatement, public debt, tax-exempt debt, rights of eminent domain, or the contracting of leaseback agreements on structures whose annualized payments commit public tax revenues; or any association that directly accepts the appropriation of money from a public governmental body, but only to the extent that a meeting, record, or vote relates to such appropriation; and

(g) Any bi-state development agency established pursuant to section 70.370, RSMo;

B. Case Law:

Cohen v. Poelker, 520 S.W.2d 50, Mo. 1975: The language in the statute makes it clear it applies to bodies at all levels of state and local government.

Champ v. Poelker, 755 S.W.2d 383, Mo.App. E.D. 1988: The statute applies to the Convention and Visitors Bureau of Greater St. Louis as a quasi-public body because of its agreements with public bodies.

Charlier v. Corum, 774 S.W.2d 518, Mo.App. W.D. 1989: A public governmental body can be a body of one. (Such bodies can have records but cannot have meetings.)

Colombo v. Buford, 935 S.W.2d 690, Mo.App. W.D. 1996: Groups of fewer than a quorum don't constitute a public governmental body.

SNL Securities, L.C. v. National Ass'n of Ins. Com'rs, 23 S.W.3d 734, Mo.App. W.D.,2000: The national association of Insurance Commissioners is not a quasi-public governmental body because it lacks the power to govern.

Jones v. Jackson County Circuit Court, 162 S.W.3d 53, Mo.App. W.D.,2005: The Sunshine Law applies to the judiciary when acting in its administrative capacity, but the court found it could determine the facts of this case without deciding whether the record-keeping function of the courts was judiciary or administrative.

Johnson v. State of Missouri, 366 S.W.3d 11, Mo. 2012: The nonpartisan reapportionment commission (redistricting committee) is a judicial entity subject to the sunshine law when operating in an administrative capacity, but in regard to its duties of reapportioning the House districts, it was operating in a legislative function, and therefore not subject to the sunshine law.

Wilkendon P'ship v. S. Louis County Bd. of Equalization, 497 S.W.3d 873, Mo.App. E.d. 2016): The Board of Equalization, like boards of adjustment, is subject to the Sunshine Act.

III. What is a meeting?

A. Statutory definition (§610.010 (5):

(5) "Public meeting", any meeting of a public governmental body subject to sections 610.010 to 610.030 at which any public business is discussed, decided, or public policy formulated, whether such meeting is conducted in person or by means of communication equipment, including, but not limited to, conference call, video conference, internet chat, or internet message board. The term "public meeting" shall not include an informal gathering of members of a public governmental body for ministerial or social purposes when there is no intent to avoid the purposes of this chapter, but the term shall include a public vote of all or a majority of the members of a public governmental body, by electronic communication or any other means, conducted in lieu of holding a public meeting with the members of the public governmental body gathered at one location in order to conduct public business;

B. Case law:

Kansas City Star Co. v. Shields 771 S.W.2d 101, Mo.App. W.D. 1989: A luncheon attended by a quorum of members of a Finance

subcommittee to discuss the budget was a public meeting of a public governmental body at which public business is discussed and occurred without notice having been given.

Kansas City Star Co. v. Fulson, 859 S.W.2d 934, Mo.App. W.D. 1993: Public business encompasses those matters over which the public governmental body has supervision, control, jurisdiction or advisory power. Activities to improve the personal relations of individuals who serve together on a public governmental body, if limited to the issues of social interaction, are not matters of public business.

Colombo v. Buford, 935 S.W.2d 690, Mo.App. W.D. 1996: A "social" gathering by nature is one where persons gather in pleasant companionship with friends and associates. The plain and ordinary meaning of "informal" as derived from the dictionary is "not formal; conducted or carried out without formal, regularly prescribed or ceremonious procedure; unofficial." The definition of "unofficial" is "not belonging to, emanating from, or sanctioned or acknowledged by a governing body".

IV. What is a record?

A. Statutory definition (§610.010 (6):

(6) "Public record", any record, whether written or electronically stored, retained by or of any public governmental body including any report, survey, memorandum, or other document or study prepared for the public governmental body by a consultant or other professional service paid for in whole or in part by public funds, including records created or maintained by private contractors under an agreement with a public governmental body or on behalf of a public governmental body; provided, however, that personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years. The term "public record" shall not include any internal memorandum or letter received or prepared by or on behalf of a member of a public governmental body consisting of advice, opinions and recommendations in connection with the deliberative decision-making process of said body, unless such records are retained by the public governmental body or presented at a public meeting. Any document or study prepared for a public governmental body by a consultant or other professional service as described in this subdivision shall be retained by the public governmental body in the same manner as any other public record;

B. Case law:

Oregon County R-IV School Dist. v. LeMon, 739 S.W.2d 553, Mo.App.1987: A school district was required by the Sunshine Law

to release the names, addresses, and telephone numbers of all of its students to a man who wanted to publish a school directory.

Tipton v. Barton, 747 S.W.2d 325, Mo.App. E.D.1988: Billing statements prepared by the city attorney were retained by the city and therefore were public records.

Charlier v. Corum, 774 S.W.2d 518, Mo.App. W.D. 1989: A public body of one cannot have meetings but does have records.

Missouri Protection and Advocacy Services v. Allan, 787 S.W.2d 291, Mo.App. W.D. 1990: The language is " any record retained," not just those records viewed as final in form.

City of Springfield v. Events Pub. Co., 951 S.W.2d 366, Mo.App. S.D.,1997: City-owned utility must reveal the names and addresses of new commercial hookups and names and addresses of new residential hookups when the customer has not requested confidentiality.

Hemeyer v. KRCG-TV, 6 S.W.3d 880, Mo.,1999: A record that is retained at the time the request for access is made is a record for sunshine law purposes.

Am. Family Mut. Ins. Co. v. Missouri Dep't of Ins., 169 S.W.3d 905, 914-15, Mo. Ct. App. 2005: For the purposes of the Sunshine Act, "public records" include only those written or electronic records "that are already in existence that the public governmental body is 'holding' or 'maintaining' in its possession. There is nothing in the definition of 'public records,' ... that indicates that it includes written or electronic records that can be created by the public governmental body, even if the new record could be created from information culled from existing records. The plain language of the Sunshine Law does not require a public governmental body to create a new record upon request, but only to provide access to existing records held or maintained by the public governmental body.

V. Procedure for Calling an Open Meeting:

A. Statutory provisions (610.020):

1. All public governmental bodies shall give notice of the time, date, and place of each meeting, and its tentative agenda, in a manner reasonably calculated to advise the public of the matters to be considered, and if the meeting

will be conducted by telephone or other electronic means, the notice of the meeting shall identify the mode by which the meeting will be conducted and the designated location where the public may observe and attend the meeting. If a public body plans to meet by Internet chat, internet message board, or other computer link, it shall post a notice of the meeting on its web site in addition to its principal office and shall notify the public how to access that meeting. Reasonable notice shall include making available copies of the notice to any representative of the news media who requests notice of meetings of a particular public governmental body concurrent with the notice being made available to the members of the particular governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.

2. Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours, exclusive of weekends and holidays when the facility is closed, prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. Each meeting shall be held at a place reasonably accessible to the public and of sufficient size to accommodate the anticipated attendance by members of the public, and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impractical. Every reasonable effort shall be made to grant special access to the meeting to handicapped or disabled individuals.

3. A public body shall allow for the recording by audiotape, videotape, or other electronic means of any open meeting. A public body may establish guidelines regarding the manner in which such recording is conducted so as to minimize disruption to the meeting. No audio recording of any meeting, record, or vote closed pursuant to the provisions of section 610.021 shall be permitted without permission of the public body; any person who violates this provision shall be guilty of a class C misdemeanor.

4. When it is necessary to hold a meeting on less than twenty-four hours' notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes.

5. A formally constituted subunit of a parent governmental body may conduct a meeting without notice as required by this section during a lawful meeting of the parent governmental body, a recess in that meeting, or immediately following that meeting, if the meeting of the subunit is publicly announced at the parent meeting and the subject of the meeting reasonably coincides with the subjects discussed or acted upon by the parent governmental body.

6. If another provision of law requires a manner of giving specific notice of a meeting, hearing or an intent to take action by a governmental body, compliance with that section shall constitute compliance with the notice requirements of this section.

7. A journal or minutes of open and closed meetings shall be taken and retained by the public governmental body, including, but not limited to, a record of any votes taken at such meeting. The minutes shall include the date, time, place, members present, members absent and a record of any votes taken. When a roll call vote is taken, the minutes shall attribute each "yea" and "nay" vote or

abstinence if not voting to the name of the individual member of the public governmental body.

B. Case law:

Fitzgerald v. City of Maryland Heights, 796 S.W.2d 52, Mo. App. E.D., 1990: Section 610.020 is intended to provide the public a reasonable opportunity to attend meetings of governmental bodies.

Progress Missouri, Inc., v. Missouri Senate, 494 S.W.3d 1, Mo.App. W.D. 2016: The right to record is satisfied if the public body is creating its own recording. It is not a right for all to record but a right for a recording to exist and for access to that end product based upon the rules created by the body to minimize disruption of the body's proceedings.

VI. Provisions for calling a Closed Meeting:

A. Statutory provisions (§610.022):

1. Except as set forth in subsection 2 of this section, no meeting or vote may be closed without an affirmative public vote of the majority of a quorum of the public governmental body. The vote of each member of the public governmental body on the question of closing a public meeting or vote and the specific reason for closing that public meeting or vote by reference to a specific section of this chapter shall be announced publicly at an open meeting of the governmental body and entered into the minutes.

2. A public governmental body proposing to hold a closed meeting or vote shall give notice of the time, date and place of such closed meeting or vote and the reason for holding it by reference to the specific exception allowed pursuant to the provisions of section 610.021. Such notice shall comply with the procedures set forth in section 610.020 for notice of a public meeting.

3. Any meeting or vote closed pursuant to section 610.021 shall be closed only to the extent necessary for the specific reason announced to justify the closed meeting or vote. Public governmental bodies shall not discuss any business in a closed meeting, record or vote which does not directly relate to the specific reason announced to justify the closed meeting or vote. Public governmental bodies holding a closed meeting shall close only an existing portion of the meeting facility necessary to house the members of the public governmental body in the closed session, allowing members of the public to remain to attend any subsequent open session held by the public governmental body following the closed session.

4. Nothing in sections 610.010 to 610.028 shall be construed as to require a public governmental body to hold a closed meeting, record or vote to discuss or act upon any matter.

5. Public records shall be presumed to be open unless otherwise exempt pursuant to the provisions of this chapter.

6. In the event any member of a public governmental body makes a motion to close a meeting, or a record, or a vote from the public and any other member believes that such motion, if passed, would cause a meeting, record or

vote to be closed from the public in violation of any provision in this chapter, such latter member shall state his or her objection to the motion at or before the time the vote is taken on the motion. The public governmental body shall enter in the minutes of the public governmental body any objection made pursuant to this subsection. Any member making such an objection shall be allowed to fully participate in any meeting, record or vote that is closed from the public over the member's objection. In the event the objecting member also voted in opposition to the motion to close the meeting, record or vote at issue, the objection and vote of the member as entered in the minutes shall be an absolute defense to any claim filed against the objecting member pursuant to section 610.027.

B. Case law:

Moynihan v. City of Manchester, 265 S.W.3d 350, Mo.App. E.D.,2008. The Board must follow certain procedures to close a meeting.

VII. What Records **Must** be Open?

A. Statutory provisions (§610.011):

1. It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.200 shall be liberally construed and their exceptions strictly construed to promote this public policy.

2. Except as otherwise provided by law, all public meetings of public governmental bodies shall be open to the public as set forth in section 610.020, all public records of public governmental bodies shall be open to the public for inspection and copying as set forth in sections 610.023 to 610.026, and all public votes of public governmental bodies shall be recorded as set forth in section 610.015.

B. Case law:

Oregon County R-IV School Dist. v. LeMon, 739 S.W.2d 553, Mo.App. S.D. 1987: A record must be open to the public for inspection and duplication unless a statute prohibits its disclosure.

VIII. What Records **MAY** be Closed?

A. Statutory Provisions (§610.021):

Except to the extent disclosure is otherwise required by law, a public governmental body is authorized to close meetings, records and votes, to the extent they relate to the following:

(1) **Legal actions, causes of action or litigation** involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys. However, any minutes, vote or **settlement agreement** relating to legal actions, causes of action or litigation involving a public governmental body or any agent or entity representing its interests or acting on its behalf or with its authority, including any insurance company acting on behalf of a public government body as its insured, **shall be made public upon final disposition of the matter voted upon**

or upon the signing by the parties of the settlement agreement, unless, prior to final disposition, the settlement agreement is ordered closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy considerations of section 610.011, however, the amount of any moneys paid by, or on behalf of, the public governmental body shall be disclosed; provided, however, in matters involving the exercise of the power of eminent domain, the vote shall be announced or become public immediately following the action on the motion to authorize institution of such a legal action. Legal work product shall be considered a closed record;

(2) **Leasing, purchase or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor**. However, any minutes, vote or public record approving a contract relating to the leasing, purchase or sale of real estate by a public governmental body shall be made public upon execution of the lease, purchase or sale of the real estate;

(3) **Hiring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded**. However, any vote on a final decision, when taken by a public governmental body, to hire, fire, promote or discipline an employee of a public governmental body shall be made available with a record of how each member voted to the public within seventy-two hours of the close of the meeting where such action occurs; provided, however, that any employee so affected shall be entitled to prompt notice of such decision during the seventy-two-hour period before such decision is made available to the public. As used in this subdivision, the term "personal information" means information relating to the performance or merit of individual employees;

(4) The state militia or national guard or any part thereof;

(5) Nonjudicial mental or physical health proceedings involving identifiable persons, including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment;

(6) Scholastic probation, expulsion, or graduation of identifiable individuals, including records of individual test or examination scores; however, personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years;

(7) Testing and examination materials, before the test or examination is given or, if it is to be given again, before so given again;

(8) Welfare cases of identifiable individuals;

(9) **Preparation**, including any discussions or work product, on behalf of a public governmental body or its representatives **for negotiations with employee groups;**

(10) Software codes for electronic data processing and documentation thereof;

(11) **Specifications for competitive bidding**, until either the specifications are officially approved by the public governmental body or the specifications are published for bid;

(12) **Sealed bids and related documents**, until the bids are opened; and sealed proposals and related documents **or any documents related to a negotiated contract** until a contract is executed, or all proposals are rejected;

(13) **Individually identifiable personnel records**, performance ratings or records pertaining to employees or applicants for employment, except that this

exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such, and the names of private sources donating or contributing money to the salary of a chancellor or president at all public colleges and universities in the State of Missouri and the amount of money contributed by the source;

(14) Records which are protected from disclosure by law;

(15) Meetings and public records relating to scientific and technological innovations in which the owner has a proprietary interest;

(16) Records relating to municipal hotlines established for the reporting of abuse and wrongdoing;

(17) Confidential or privileged communications between a public governmental body and its auditor, including all auditor work product; however, all final audit reports issued by the auditor are to be considered open records pursuant to this chapter;

(18) Operational guidelines, policies and specific response plans developed, adopted, or maintained by any public agency responsible for law enforcement, public safety, first response, or public health for use in responding to or preventing any critical incident which is or appears to be terrorist in nature and which has the potential to endanger individual or public safety or health. Financial records related to the procurement of or expenditures relating to operational guidelines, policies or plans purchased with public funds shall be open. When seeking to close information pursuant to this exception, the public governmental body shall affirmatively state in writing that disclosure would impair the public governmental body's ability to protect the security or safety of persons or real property, and shall in the same writing state that the public interest in nondisclosure outweighs the public interest in disclosure of the records;

; (19) Existing or proposed security systems and structural plans of real property owned or leased by a public governmental body, and information that is voluntarily submitted by a nonpublic entity owning or operating an infrastructure to any public governmental body for use by that body to devise plans for protection of that infrastructure, the public disclosure of which would threaten public safety:

(a) Records related to the procurement of or expenditures relating to security systems purchased with public funds shall be open;

(b) When seeking to close information pursuant to this exception, the public governmental body shall affirmatively state in writing that disclosure would impair the public governmental body's ability to protect the security or safety of persons or real property, and shall in the same writing state that the public interest in nondisclosure outweighs the public interest in disclosure of the records;

(c) Records that are voluntarily submitted by a nonpublic entity shall be reviewed by the receiving agency within ninety days of submission to determine if retention of the document is necessary in furtherance of a state security interest. If retention is not necessary, the documents shall be returned to the nonpublic governmental body or destroyed;

(20) The portion of a record that identifies security systems or access codes or authorization codes for security systems of real property;

(21) Records that identify the configuration of components or the operation of a computer, computer system, computer network, or telecommunications network, and would allow unauthorized access to or unlawful disruption of a computer, computer system, computer network, or telecommunications network of a public governmental body. This exception

shall not be used to limit or deny access to otherwise public records in a file, document, data file or database containing public records. Records related to the procurement of or expenditures relating to such computer, computer system, computer network, or telecommunications network, including the amount of moneys paid by, or on behalf of, a public governmental body for such computer, computer system, computer network, or telecommunications network shall be open;

(22) Credit card numbers, personal identification numbers, digital certificates, physical and virtual keys, access codes or authorization codes that are used to protect the security of electronic transactions between a public governmental body and a person or entity doing business with a public governmental body. Nothing in this section shall be deemed to close the record of a person or entity using a credit card held in the name of a public governmental body or any record of a transaction made by a person using a credit card or other method of payment for which reimbursement is made by a public governmental body; and

(23) Records submitted by an individual, corporation, or other business entity to a public institution of higher education in connection with a proposal to license intellectual property or perform sponsored research and which contains sales projections or other business plan information the disclosure of which may endanger the competitiveness of a business.

B. Case law:

State ex rel. City Of Springfield v. Brown, 181 S.W.3d 219, Mo.App. S.D.,2005.: All records of public governmental bodies are presumed to be open records and the exceptions are to be strictly construed to promote that policy.

Spradlin v. City of Fulton, 982 S.W.2d 255, Mo.,1998: Where real estate was purchased by a third party, not the public body, the exception in 610.021 (2) would not apply to close the discussion.

Paskon v. Salem Memorial Hosp. Dist., 806 S.W.2d 417, Mo.App. S.D. 1991: The purpose of the "employee" exception is to encourage uninhibited discussion of the qualifications and conduct of one who acts on behalf of a public governmental body. To permit such discussion in a closed meeting inures to the benefit of both parties. As a member of the active staff, the plaintiff regularly renders service on behalf of and is paid by the District and is an "employee" within the meaning of § 610.021(3).

Hudson v. School Dist. of Kansas City, 578 S.W.2d 301, Mo.App. W.D. 1979: Discussions of elimination of programs or a broad range of positions must be made in open session. After those decisions are made publicly, the board may close the meeting to discuss individual personnel matters.

Librach v. Cooper. 778 S.W.2d 351, Mo.App. E.D. 1989: The term "salary" must be broadly construed.

Tuft v. City of St. Louis, 936 S.W.2d 113, Mo.App. E.D. 1996: Where the justification offered is potential as opposed to pending litigation, the governmental body should properly bear a heavy burden of demonstrating both a substantial likelihood that litigation may occur and a clear nexus between the document sought and the anticipated litigation.

State v. Jackson, 353 S.W.3d 657, Mo.App. S.D. 2011: If a record can be closed, but is open under other provisions of the sunshine law, then a record cannot be closed where it is "otherwise provided by law" to be open.

Draper v. City of Festus, 2013 WL 5651380 (slip opinion) Mo.App. E.D. 2013: This case appears to establish a mandatory requirement that an employee be notified prior to any public announcement of a termination.

Laut v. City of Arnold, 417 S.W.3d 315 Mo.App. E.D., 2013: When dealing with a request for a report may be part investigative report and part personnel file, the city is obligated to separate the personnel file from what would constitute an investigative report and, if that report is now not a closed record, it must be made public.

But see: **Chasnoff v. Mokwa,** 415 S.W.3d 152, Mo.App. E.D., 2015: Where records were of a disciplinary investigation of individually identifiable police officers, no personal or private facts are involved but only evidence of substantiated on-the-job misconduct and therefore the records are investigative records and not employment records under 610.021 (13).

N. Kansas City Hosp. Bd. of Trustees v. St. Luke's Northland Hosp., 984 S.W.2d 113, 121-22, Mo. Ct. App. 1998: No private individual or entity entering into a contract with a public governmental entity can have a reasonable expectation of privacy with regard to the such a contract except to the extent those contracts, or portions thereof, fall within an exception set forth in § 610.021... To prevent the disclosure of contracts that public governmental bodies enter into with private entities or individuals would significantly inhibit this purpose.

IX. Procedure for Voting:

A. Statutory provisions (§610.015):

Votes, how taken

Except as provided in section 610.021, rules authorized pursuant to article III of the Missouri Constitution and as otherwise provided by law, **all votes shall be recorded,** and **if a roll call is taken, as to attribute each "yea" and "nay"** vote, or abstinence if not voting, to the name of the individual member of the public governmental body. **Any votes taken during a closed meeting shall be taken by roll call.** All public meetings shall be open to the public and public votes and public records shall be open to the public for inspection and duplication. All votes taken by roll call in meetings of a public governmental body consisting of members who are all elected, except for the Missouri General Assembly and any committee established by a public governmental body, shall be cast by members of the public governmental body who are physically present and in attendance at the meeting. When it is necessary to take votes by roll call in a meeting of the public governmental body, due to an emergency of the public body, with a quorum of the members of the public body physically present and in attendance and less than a quorum of the members of the public governmental body participating via telephone, facsimile, Internet, or any other voice or electronic means, the nature of the emergency of the public body justifying that departure from the normal requirements shall be stated in the minutes. Where such emergency exists, the votes taken shall be regarded as if all members were physically present and in attendance at the meeting.

X. Procedure for Records Request:

A. Statutory provisions:

(§610.023):

1. Each public governmental body is to appoint a **custodian** who is to be responsible for the maintenance of that body's records. The identity and location of a public governmental body's custodian is to be made available upon request.

2. Each public governmental body shall make available for inspection and copying by the public of that body's public records. No person shall remove original public records from the office of a public governmental body or its custodian without written permission of the designated custodian. No public governmental body shall, after August 28, 1998, grant to any person or entity, whether by contract, license or otherwise, the exclusive right to access and disseminate any public record unless the granting of such right is necessary to facilitate coordination with, or uniformity among, industry regulators having similar authority.

3. Each request for access to a public record shall be acted upon as soon as possible, but in no event later than the end of the third business day following the date the request is received by the custodian of records of a public governmental body. If records are requested in a certain format, the public body shall provide the records in the requested format, if such format is available. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. This period for document production may exceed three days for reasonable cause.

4. If a request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for such denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester no later than the end of the third business day following the date that the request for the statement is received.

(§610.024):

1. If a public record contains material which is not exempt from disclosure as well as material which is exempt from disclosure, the public governmental body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

2. When designing a public record, a public governmental body shall, to the extent practicable, facilitate a separation of exempt from nonexempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the public governmental body shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

(§610.026):

1. Except as otherwise provided by law, each public governmental body shall provide access to and, upon request, furnish copies of public records subject to the following:

(1) Fees for copying public records, except those records restricted under section 32.091, RSMo, **shall not exceed ten cents per page** for a paper copy not larger than nine by fourteen inches, with the hourly fee for duplicating time not to exceed the average hourly rate of pay for clerical staff of the public governmental body. Research time required for fulfilling records requests may be charged at the actual cost of research time. Based on the scope of the request, the public governmental body shall produce the copies using employees of the body that result in the lowest amount of charges for search, research, and duplication time. Prior to producing copies of the requested records, the person requesting the records may request the public governmental body to provide an estimate of the cost to the person requesting the records. Documents may be furnished without charge or at a reduced charge when the public governmental body determines that waiver or reduction of the fee is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the public governmental body and is not primarily in the commercial interest of the requester;

(2) Fees for providing access to public records maintained on computer facilities, recording tapes or disks, videotapes or films, pictures, maps, slides, graphics, illustrations or similar audio or visual items or devices, and for paper copies larger than nine by fourteen inches shall include only the cost of copies, staff time, which shall not exceed the average hourly rate of pay for staff of the public governmental body required for making copies and programming, if necessary, and the cost of the disk, tape, or other medium used for the duplication. Fees for maps, blueprints, or plats that require special expertise to duplicate may include the actual rate of compensation for the trained personnel required to duplicate such maps, blueprints, or plats. If programming is required beyond the customary and usual level to comply with a request for records or information, the fees for compliance may include the actual costs of such programming.

2. Payment of such copying fees may be requested prior to the making

of copies.

3. Except as otherwise provided by law, each public governmental body of the state shall remit all moneys received by or for it from fees charged pursuant to this section to the director of revenue for deposit to the general revenue fund of the state.

4. Except as otherwise provided by law, each public governmental body of a political subdivision of the state shall remit all moneys received by it or for it from fees charged pursuant to sections 610.010 to 610.028 to the appropriate fiscal officer of such political subdivision for deposit to the governmental body's accounts.

5. The term "tax, license or fees" as used in section 22 of article X of the Constitution of the State of Missouri does not include copying charges and related fees that do not exceed the level necessary to pay or to continue to pay the costs for providing a service, program, or activity which was in existence on November 4, 1980, or which was approved by a vote of the people subsequent to November 4, 1980.

B. Case law:

Pennington v. Dobbs, 235 S.W.3d 77, Mo.App. S.D. 2007: The statute provides that the request for access is to be received by the custodian of records of a public governmental body. The requester's burden includes ensuring that the request for access to records gets to the custodian of records.

Anderson v. Village of Jacksonville, 103 S.W.3d 190 Mo.App. W.D., 2003: The statute does not specifically require that the request be in writing. The statute does require that the communication express a request for access to a public record and requires a reasonable attempt by the custodian to understand what record the requester seeks.

Jones v. Jackson County Circuit Court, 174 S.W.3d 594 Mo.App. W.D., 2005: No requirement to make a data element available as a public record just because it is possible to do so, where it is not normally kept in that fashion by the recordkeeper.

State ex rel. Missouri Local Government Retirement System v. Bill, 935 S.W.2d 659, Mo.App. W.D. 1996: Public body has the duty to cull the exempt from the non-exempt information and produce the non-exempt information.

Webster County Abstract v Atkinson, 328 S.W.3d 434 Mo.App. S.D., 2010: Where another statute sets out the cost for a copy of a record, that statute overrides the sunshine law provisions for the cost of copies.

R.L. Polk v. Mo. Dept. Of Revenue, 309 S.W.3d 881, Mo.App. W.D. 2010: The sunshine law provides no authority to charge a per-record fee for electronic copies without reference to the particulars of the specific request for copying.

State ex rel. Daly v. Information Technology Services Agency of City of St. Louis, 417 S.W.3d 804, Mo.App.E.D. 2013: The plain and ordinary meaning of these words reveals the intent of the General Assembly in enacting this statute that the custodian of records of an agency is the gatekeeper of that agency's records. The wording of the statute makes clear that a public agency's custodian of records is responsible for a request for that agency's records... the proper recipient of a request for a particular agency's public records, or the public records of that agency, is that agency's custodian of those records, who has legal control over those records. Also it closes sick leave information where it is not transmutable to salary.

XI. Remedies, Penalties, Costs:

A. Statutory provisions (§610.027):

1. The remedies provided by this section against public governmental bodies shall be in addition to those provided by any other provision of law. Any aggrieved person, taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek judicial enforcement of the requirements of sections 610.010 to 610.026. Suits to enforce sections 610.010 to 610.026 shall be brought in the circuit court for the county in which the public governmental body has its principal place of business. Upon service of a summons, petition, complaint, counterclaim, or cross-claim in a civil action brought to enforce the provisions of sections 610.010 to 610.026, the custodian of the public record that is the subject matter of such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the public record sought to be inspected and examined, notwithstanding the applicability of an exemption pursuant to section 610.021 or the assertion that the requested record is not a public record until the court directs otherwise.

2. Once a party seeking judicial enforcement of sections 610.010 to 610.026 demonstrates to the court that the body in question is subject to the requirements of sections 610.010 to 610.026 and has held a closed meeting, record or vote, the burden of persuasion shall be on the body and its members to demonstrate compliance with the requirements of sections 610.010 to 610.026.

3. Upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has **knowingly** violated sections 610.010 to 610.026, the public governmental body or the member shall be subject to a civil penalty in an amount **up to one thousand dollars**. If the court finds that there is a knowing violation of sections 610.010 to 610.026, the court **may** order the payment by such body or member of all costs and reasonable attorney fees to any party successfully establishing a violation. The court shall determine the amount of the penalty by taking into account the

size of the jurisdiction, the seriousness of the offense, and whether the public governmental body or member of a public governmental body has violated sections 610.010 to 610.026 previously.

4. Upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has **purposely** violated sections 610.010 to 610.026, the public governmental body or the member shall be subject to a civil penalty in an amount **up to five thousand dollars**. If the court finds that there was a purposeful violation of sections 610.010 to 610.026, then the court **shall** order the payment by such body or member of all costs and reasonable attorney fees to any party successfully establishing such a violation. The court shall determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the public governmental body or member of a public governmental body has violated sections 610.010 to 610.026 previously.

5. Upon a finding by a preponderance of the evidence that a public governmental body has violated any provision of sections 610.010 to 610.026, a court shall void any action taken in violation of sections 610.010 to 610.026, if the court finds under the facts of the particular case that the public interest in the enforcement of the policy of sections 610.010 to 610.026 outweighs the public interest in sustaining the validity of the action taken in the closed meeting, record or vote. Suit for enforcement shall be brought within one year from which the violation is ascertainable and in no event shall it be brought later than two years after the violation. This subsection shall not apply to an action taken regarding the issuance of bonds or other evidence of indebtedness of a public governmental body if a public hearing, election or public sale has been held regarding the bonds or evidence of indebtedness.

6. A public governmental body which is in doubt about the legality of closing a particular meeting, record or vote may bring suit at the expense of that public governmental body in the circuit court of the county of the public governmental body's principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body.

B. Case law:

Colombo v. Buford, 935 S.W.2d 690, Mo.App. W.D. 1996: The plaintiffs bear the burden of persuasion until they are able to meet two requirements: 1) the body represented by the defendants is subject to the Sunshine Law; and 2) the body has held a closed meeting, record, or vote. Then, the burden of persuasion should have been shifted to respondents at trial.

White v. City of Ladue, 422 S.W.3d 439, Mo. App. 2013: A knowing violation requires proof that the public governmental body had "actual knowledge that [its] conduct violated a statutory provision."

Spradlin v. City of Fulton, 982 S.W.2d 255, Mo.,1998: "Purposely" is defined as "intentionally; designedly; consciously; knowingly. [An] Act is done 'purposely' if it is willed, is product

of conscious design, intent or plan that is to be done, and is done with awareness of probable consequences." "Purpose" is defined as "that which one sets before him to accomplish or attain; an end, intention, or aim, object, plan, project. Term is synonymous with ends sought, an object to be attained, an intention, etc." The word "purposely" when taken in its ordinary and usual sense makes clear that more than a mere intent to engage in the conduct resulting in the violation is necessary. To purposely violate the open meetings law a member of a public governmental body must exhibit a ***"conscious design, intent, or plan" to violate the law and do so "with awareness of the probable consequences."***

Strake v. Robinwood West Community Improvement District, 2015 WL 6948758 (No Westlaw cite available in January, 2016), Mo., 2015: Where body is advised by counsel that under the law records are open, but it has contractually agreed to close those records, its continued refusal to release the records is a purposeful violation.

State ex rel. Missouri Local Government Retirement System v. Bill, 935 S.W.2d 659, Mo.App. W.D. 1996: A public governmental body must bear all of the litigation expenses when the bodies choose to pursue a lawsuit against someone making a sunshine law request.

R.L. Polk v. Mo. Dept of Revenue, 309 S.W.3d 991, Mo., 2010: Engaging in conduct reasonably believed to be authorized by statute does not amount to a purposeful violation. The Court found no evidence of a purpose or intent to violate the law, therefore no award of attorneys fees.

State v Edwards, 337 S.W.3d 118, Mo.App. E.D., 2011: Reliance on counsel may not be a sufficient defense to avoid a purposeful violation. "A public official holds his office *cum onere* with all responsibilities attached." ("cum onere" = to embrace a burden)

Wright v. City of Salisbury, 2010 WL 2947709 (not reported in Westlaw), U.S.D.C., E.D.Mo., 2010: Reliance on counsel may be a sufficient defense to avoid a purposeful violation where city attorney believed no violation occurred.

Buckner v. Burnett, 908 S.W.2d 908, 911, Mo. Ct. App. 1995: A public official's intentionally forestalling production of public records until the requester sues would be a purposeful violation of

Chapter 610 and would be subject to a fine and reasonable attorney fees.

Hawkins v. City of Fayette, 604 S.W.2d 716, 725, Mo. Ct. App. 1980: The lack of public notice of a special meeting would undoubtedly deprive the public of an opportunity to seek injunctive relief against holding such a meeting without proper notice. Yet, injunctive relief is the only remedy which has been provided by the General Assembly to implement the Sunshine Law. Despite the persuasive arguments of some of the cases cited supra, for this court to declare ... (actions) invalid because of lack of public notice would amount to judicial legislation, which, because of important public considerations, this court ought not to do. It may be that there is a trend in various legislatures to provide for a declaration of invalidity to acts taken in violation of Sunshine Laws, but that is a matter for determination by the General Assembly.

Claudia Lee & Associates v. Kansas City, Missouri Bd. Of Zoning Adjustment, 489 S.W.3d 802, Mo.App. W.D. 2016, reh'g denied May 31, 2016: Simple failure to give access is not sufficient evidence of a "purposeful" violation.

Am. Civil Liberties Union of Missouri Found. V. Missouri Dep't of Corr., 504 S.W.3d 150, Mo.App. W.D. 2016: The trial court has a right to weigh the evidence and to determine if there is sufficient factual evidence before it that the actions of the public body in denying access were "knowing" or "purposeful."

Laut v. City of Arnold, 491 S.W.3d 191 (Mo. 2016): A "purposeful" violation is more than knowingly failing to produce a record – it requires a "conscious plan or scheme to violate the law." A purposeful violation involves proof of intent to defy the law or achieve further some purpose by violating the law.