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Disclaimer:

•This presentation is meant as a summary of relevant provisions of the Sunshine Law; not an official opinion of the AGO. In providing this presentation, we do not suggest that we are providing you legal advice or otherwise treating you as a client of the Attorney General's Office.

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Sunshine Law Definitions

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Public Governmental Body

- Missouri’s open records and meetings law, commonly referred to as the Sunshine Law, § 610, RSMo. is applicable to public governmental bodies and quasi-public governmental bodies

• § 610.010.(4), [Page 30]

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Public Record Definition

- 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;

•§ 610.010.(6), [Page 32]

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Electronic Transmission of Messages

- Any member of a public governmental body who transmits any message relating to public business by electronic means shall also concurrently transmit that message to either the member’s public office computer or the custodian of records in the same format.

•§ 610.025 [Page 41]

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Electronic Transmission of Messages – When Applicable

- A quorum must be included as recipients
 - This includes the sender
- Messages will be considered public records

•§ 610.025 [Page 41]

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Public v. Open

- Public Records - Records of a public governmental body
- Open Records – Public records that can be provided to a requester
- Closed Records – Public records that cannot be provided to a requester

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Responding to Open Records Requests

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Custodian of Records

- Body must appoint a custodian of records
 - The identity and location of a public governmental body's custodian is to be made available upon request
 - § 610.023.(1), [Page 40]

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Statutory Requirement

- Body must act on the request as soon as possible
 - No later than three days after the request was received by the Custodian of Records
 - § 610.023.(3), [Page 40]

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Practical Tips

- Contact the requester in writing so both parties have a copy of the response,
 - Include the date the response was sent
 - Confirm the records that were requested
 - Request clarification, if necessary

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Practical Tips

- If the requester did not state a preference in their request you can provide the record in its original format
 - Ex. Requester asks for an email, the body provides the records electronically
 - Ex. Requester asks for a copy of a mailed invoice, the body provides a physical copy of the original invoice

• § 610.023.(3), [Page 40]

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Statutory Requirement

- A public governmental body keeping its records in an electronic format is strongly encouraged to provide access to its public records to members of the public in that format.

• § 610.029.(1), [Page 45]

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Statutory Requirement

- If you cannot produce the records within three days, you will still need to contact the requester within this time frame

• § 610.023.(3), [Page 40]

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Practical Tips & Statutory Requirements

- Provide a letter to the requester to let them know the records cannot be produced within three days
 - Requirements for the response letter
 - Estimated time of when the request can be fulfilled
 - Reasonable cause for the delay

• § 610.023.(3), [Page 40]

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Practical Tips & Statutory Requirements

- No Records Responsive to the Request
 - If there are no records responsive to a request, the body will still need to send a response to the requester to let them know that there are no records responsive to their request

• § 610.023.(3), [Page 40]

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Case Law

- Jones v. Jackson County Circuit Court
 - 162 S.W.3d 53 (Mo.App. W.D. 2005)
 - The Sunshine Law does not require a government body to create a new record upon request, but only to provide access to existing records held or maintained by the public governmental body

• Paragraph(3), [Page 22]

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Closed Records

- If a record is closed, provide the requester with the reason for closure
 - Cite to the specific provision of law

•§ 610.023.(4), [Page 41]

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Closed Record Authorizations

- 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...
 - There are 23 separate reasons to close records within 610.021
 - Multiple other reasons to close records in other statutes-can be used with 610.021(14)

•§610.021, [Pages35-39]

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Statutory Requirement

- If the records responsive to the request are closed:
 - Provide a response that generally describes the material exempted, unless that description would reveal the contents of the exempt information

•§610.024.(2), [Page 41]

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Statutory Requirement

- If the records responsive to the request contain closed information the body will be required to separate the exempt and non-exempt material
 - Redaction

•§610.024.(1), [Page 41]

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Fees for Open Records Requests

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Statutory Requirements

- A public governmental body is allowed to charge fees for fulfilling open records requests
- Fees must be the lowest amount for search, research and duplication time
- A body may charge 10 cents a page for paper that is legal size or smaller

•§ 610.026.1(1), [Pages 41]

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Practical Tips

- Alert the requester, before fulfilling the request, of what the expected cost to obtain the records will be
 - Explain in a letter, or invoice, how the body arrived at the fee
 - Ex: 3 hours of research time at \$10 per hour is \$30
 - Ex: 200 sheets of paper at 10 cents a page is \$20
- § 610.026.1(1), [Pages 41-42]

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Statutory Requirement

- 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.
- § 610.026.(3), [Page 42]

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Public Meetings

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Public Meeting Definition

- Any meeting of a public governmental body subject to section 610.010. to 610.030 at which public business is discussed, decided, or public policy formulated
 - In person
 - Electronic communication (email or text)
 - Conference call
 - Online chat, or internet message board

•§ 610.010.(5), [Page 32]

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Public Meeting Definition cont.

- 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.

•§ 610.010.(5), [Page 32]

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Not a Meeting

- 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

•§ 610.010.(5), [Page 32]

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Statutory Requirements

- A notice must be posted twenty-four hours in advance of a public meeting
 - Exclusive of weekends and holidays

•§ 610.020.(2), [Page 34]

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Statutory Requirements

- Meeting Notice Requirements
 - Time
 - Date
 - Place
 - Tentative Agenda
 - Must be reasonably calculated to inform the public of the matters to be considered
 - If the meeting will be conducted by telephone or electronic means
 - § 610.020.(1), [Pages 33-34]


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Tips for Posting Meeting Notices

- Post meeting notices and agendas in an area that is accessible to the public even after business hours
- Consider posting more than one physical notice, or creating an electronic notice that could be posted online
- Include the date and time the notice was posted on the document
- Include the name and contact information of the Records Custodian on meeting notices and agendas in case someone would like to request a copy

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Statutory Requirements for Recording a Meeting

- The body shall allow members of the public to record all public meetings
 - Both audio & video recording are allowed
- The body may establish guidelines regarding the matter in which recordings are conducted
- Closed meetings may not be recorded without permission of the public body
 - Class C Misdemeanor


§ 610.020.(3), [Page 34]

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Closed Meetings

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Closed Meeting Requirement

- 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.

• § 610.022.3, [Page 39]

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Closed Meeting Authorizations

- 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...
 - There are 23 separate reasons to close meetings within 610.021
 - Other statutes that allow a body to close a meeting, record or vote can be used with 610.021(14)

•§610.021, [Pages35-39]

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Statutory Requirements for Closing a Meeting

Closed Meetings

.1 Requires an affirmative public vote of the majority of a quorum of a public governmental body with reference to a specific section of 610.021

.2 Requires a meeting notice with reference to a specific section of 610.021

• § 610.022.(1) & (2), [Page 39]

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Practical Tips

- While the two subsections appear to operate independently, it may be useful for an agency to apply both processes when closing a meeting
- We are aware that many agencies already use both of these processes when closing a meeting
- By announcing a closed meeting with a public notice, including the citation of the specific provision allowing the closure; along with having a vote during open session to close a portion of the meeting, there can be little doubt as to the propriety of the closure


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Notice of Public Meeting for Everytown City Council
 6:00 pm on October 21, 2019
 Large Government Building
 123 Main Street
 Everytown, USA 11111

Meeting Agenda
 Call to order
 Roll Call
 Approve May meeting minutes
 Unfinished Business
 City Budget
 New Business
 Approve New Sunshine Law Policy
 Public Comment Period
 Vote to Close Meeting: pursuant to § 610.021(8) RSMo, for discussion of welfare cases of identifiable individuals
 Vote to Adjourn Meeting

This notice was posted at Large Government Building on October 18, 2018, 9:30 am.
 A copy of this notice is also available online at www.everytown.usa. If you require a copy of this notice please contact the Custodian of Records at 123-456-7890 or by email at recordscustodian@everytown.usa.

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Objection

- A member of the public governmental body can object to closing a portion of the meeting.
- If a member objects their objection is required to be recorded in the body's meeting minutes
- "any member making such an objection shall be allowed to full participate in any meeting, record or vote that issue."

• § 610.022.6, [Page 40]

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Location

- "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 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."

• § 610.022.3, [Page 39]

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Statutory Requirements for Meeting Minutes

- Date
- Time
- Place
- Members Present/Absent
- Record of all votes taken
 - Including a record of each member's individual vote cast during a roll-call


• § 610.020.(7), [Page 35]

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Sunshine Law Policy

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Statutory Requirements

- “Each public governmental body shall provide a reasonable written policy in compliance with sections 610.010 to 610.030, open to public inspection, regarding the release of information on any meeting, record or vote”

• § 610.028.(2), [Page 44-45]

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Practical Tips

- A sample resolution is available online at www.ago.mo.gov
- **Simple**
 - name and address of custodian, schedule of fees and deadlines for filling requests, etc.
- **Detailed**
 - including policy for routing records requests, specific cost for frequently requested records, circumstances under which fees will be waived, etc.

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AGO Complaint Process

Educate

Provide information to public governmental bodies and constituents about the Missouri Sunshine Law

Mediate

Work with a complainant and the public governmental body to navigate a records request or meeting issue

Litigate

In exceptional circumstances our office has filed petitions against a public governmental body concerning a possible Sunshine Law Violation

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Contact Information:

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- <https://ago.mo.gov/other-resources/publications/order-publications>

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Questions?
