

**Missouri Municipal League**  
Annual Conference  
September 10, 2019

*The Missouri Sunshine Law*  
*A Refresher*

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## THE SUNSHINE LAW

### CHAPTER 610 RSMO: GOVERNMENTAL BODIES AND RECORDS LAW

#### **History and Purpose**

- Originally enacted in 1973.
- The “Sunshine Law” opens governmental records, meetings, and votes for public access.
- Also allows some records, meetings, and votes to be “closed” in order to keep them confidential.
- All public governmental bodies and their boards and committees are subject to this law.
- Liberally construed in favor of disclosure.
- Law sets out specific situations where a meeting, record, or vote may be closed but stresses that those exceptions will be strictly interpreted.

#### **“Public Meetings”**

- Aimed at “meetings” – should be public.
- To have a *meeting*, generally the focus is on whether a **QUORUM** of the governmental body is present – A quorum is one more than half of the members.
- **Does not** include informal gatherings for ministerial or social purposes *when there is no intent to avoid the purposes of the Sunshine Law*.
- Remember, though, because liberally construed, the Sunshine Law applies also to less than a quorum where the entity is attempting to circumvent the law by having separate meetings of less than a quorum but which involve a quorum where public business is discussed.
- Meeting must be held at a reasonably convenient time and at a facility with sufficient size to accommodate the public. The facility should also be accessible to persons with disabilities.

#### **Section 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 **or who are participating via videoconferencing**. *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.”

- *Exceptions:*
  - 1) Missouri general assembly members must be physically present; and
  - 2) Any members of a committee established by a public governmental body.
- **What does that mean?**
  - **When there is an emergency** of the public body, **there must be a quorum** in physical attendance for the person(s) participating via telephone, facsimile, internet, or any other voice or electronic means **to participate in the roll call vote**.
    - Also note the emergency must be stated in the minutes to allow persons to vote on roll call matters.
  - Unclear whether members participating via videoconferencing can count towards quorum when not an emergency.
  - We assume it was the intent that they can count towards quorum and can participate in the roll call vote; but unclear.
  - **Best practice:** have a policy, it’s your shield:
    - Any member **or employee** of the public governmental body **who complies with a written policy** is not guilty of a violation of Sunshine Act or subject to civil liability for any act arising out of following the written policy. § 610.028.2.
- **When is roll call required?**
  - To go into closed session
  - Any vote taken in closed session
  - Whenever specified number of votes are required

## **Sections 610.022: Closed Meetings, Procedure, and Limitation**

- Section 610.022. *Closed meetings, procedure and limitation — public records presumed*

*open unless exempt.*

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.

- **What does that mean?**

- To close a meeting, an affirmative vote by the majority of the elected governmental body is required. A record of each member's vote and the reason for closure must be included in the open meeting minutes.
- The closed meeting may only address the specific subjects specified in the closed meeting notice or vote.

**Section 610.010. Definitions.** As used in this chapter, unless the context otherwise indicates, the following terms mean:

- **(6) “Public record,”** any record:
  - 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.
- **(6) “Public record”** does *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 ... shall be retained by the public governmental body in the same manner as any other public record;

**Section 610.025. Electronic transmission of messages relating to public business, requirements.**

- 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.
- Only applies to “messages sent to 2 or more members of that body so that, when counting the sender, a majority of the body's members are copied. Any such message received by the custodian or at the member's office computer shall be a public record subject to the exceptions of section 610.021.”

**Sections 610.023 and 610.024: Record Request**

- Must “respond” within 3 business days (not counting the first day you receive the request) – not necessarily have records available.
- If not producing the records within 3 business days, provide a “detailed explanation” for the delay and state the “earliest time and date” when access will be provided.
- May charge reasonable fees as outlined in § 610.026:
  - Fees for copying shall not exceed .10 per page for a paper copy not larger than 9x14 inches.
  - Hourly fee for duplicating time not to exceed average hourly rate of pay for clerical staff of the public governmental body.
  - Research time for fulfilling record requests may be charged at actual cost of research time.
  - Based on scope of request, governmental body shall produce copies using employees of the body that result in the lowest amount of charges for search, research, and duplication time.
  - Fees for access to records maintained on computer facilities and paper copies larger than 9x14 inches shall include only the cost of copies and 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.
  - Fees for blueprints or plats may include actual rate of compensation for the trained personnel required to duplicate such.
- If access is denied, *and if requested*, custodian must explain in writing the grounds for denial.
- If only part of a record is open, must produce record with closed information redacted.
- Requires record to be provided in format requested, if available.

**Under the Sunshine Law, a compilation of information must already exist in public records:**

- You do not have to answer questions under the Sunshine Law.
- You do not have to “certify” records.
- You do not have to create records.
- Request must be communicated in language that a reasonably competent custodian of records would understand. *Anderson v. Village of Jackson*, 103 S.W.3d 190 (Mo. App. 2003) (“one seeking access to public records must communicate a request in language that a *reasonably competent* custodian of the records would understand. ... **The statute does not require that the custodian of public records perform more than to provide access to records for which access is sought.**”) (emphasis added).

**Closed Records** (note: this list is not exhaustive, see § 610.021).

- Vote or settlement agreement related to legal actions, cause of actions, or litigation. (1)
  - But such shall be made public upon final disposition of the matter.
- Real estate contract if being made public will effect negotiation. (2)
  - Real estate contracts (purchase, sale or lease) must be made public on execution.
- Sealed bids. (12)
  - Until opened, then public.
- Specifications for competitive bidding. (11)
  - Until such are published for bid or approved officially by governing body.
- Confidential or privileged communications with auditor. (17)
  - Final audit reports are public.
- Personal information, credit card numbers. (22)
- Software codes for electronic data processing, operational guidelines and policies developed for law enforcement, existing or proposed security systems, and structural plans. (21)
- Records relating to scientific and technological innovations in which owner has proprietary interests. (15)
- Confidential or privileged communications with attorney; attorney work product in anticipation of litigation. (1)
- Meeting to discuss hiring, firing, disciplining, or promoting of employee. (3)

- Final decision to fire, hire, promote, or discipline employee – must be made public within 72 hours --- to give governing body time to give the affected employee “prompt notice of such decision during the seventy-two hour period before such decision is made available to the public.” § 610.021(3).
- Section 610.021(3) does not authorize a city’s governing body to close a meeting when considering appointments of *volunteers* to citizen boards. AG Opinion No. 184-89.
- Elected officials are not “employees” – *AG Opinion No. 77-92* (For purposes of § 610.021(3) and (13), an elected mayor and elected city council members are not employees of a city).
- This exception also does not apply to independent contractors.
- Individually identifiable personnel records, performance ratings, or records pertaining to employees *or* applicants for employment. (13).
  - *Only exceptions:*
    - Name,
    - Position,
    - Salary, and
    - Length of service.
  - *State ex rel. Daly v. Information Technology Services Agency of the City of St. Louis*, 417 S.W.3d 804 (ED 2013) held that “pay records for accrued sick time, vacation time and compensatory time are open records subject to disclosure under the term ‘salary’ ... when the accrued time is available to the employee in the form of a payment from state treasury funds or convertible into money coming from the ‘public coffers.’”
  - Note also, there are state and federal laws, such as the Americans with Disability Acts and HIPPA, that protects disclosure of medical or physical health information.

### Other Closed Records

- **Section 610.021(14) – Records which are protected from disclosure by law:**
  - **HIV testing records** - Section 191.656 RSMo.
  - **Tax returns** - Section 32.057 RSMo.
  - **Qualification to carry a concealed weapon** - Section 571.101.9 RSMo.
  - **Many juvenile records** - Section 211.321 RSMo.
  - **Mental health treatment records** - Section 630.140 RSMo.

- **Genetic information** - Section 375.1309 RSMo.
- **Adoption records** - Sections 453.120 and 453.121 RSMo.
- **Social Security Numbers**
  - Should you redact SSNs? = YES.
    - Section 610.035 RSMo. states that no “state entity” shall publicly disclose any SSN unless permitted by law or authorized by the holder of that SSN...
      - But, a city is not a “state entity” as defined by the statute.
  - However, § 610.021(14) protects records which are protected from disclosure by law.
    - **42 USC 405 (c)(2)(c)(viii)(I)** states: Social security account numbers and related records that are obtained or maintained by authorized persons pursuant to any provision of law enacted on or after October 1, 1990, *shall be confidential, and no authorized person shall disclose any such social security account number or related record.*

### **Right to Speak**

- Sunshine law has no effect on and creates no right to speak at a public meeting.

### **Notice**

- Section 610.020.2 – Notice “shall be given at least twenty-four hours, exclusive of weekends and holidays when the facility is closed.”
- Section 89.050 – 15-day hearing notice requirement for zoning regulations, restrictions, or boundary changes generally.
- Section 67.2725 – 4 days’ notice for meetings where eminent domain or taxes are discussed.
  - This does not apply to setting annual tax levy for real/personal property taxes.
- Exceptions:
  - Section 610.020.4 allows meetings on *less than* 24-hours’ notice for “good cause.”
  - This will not work for the zoning, eminent domain or tax issues set forth above.

### **Section 610.027: Violations and Court Actions**

- Suit may be brought by any Missouri taxpayer, citizen or aggrieved party, Attorney General, or County Prosecutor.



- Lawsuit must be filed within 1 year from when violation is ascertainable but no later than 2 years after the violation occurred.
- If a court finds a city violated the sunshine law, court may declare the action taken void.
- If court finds the governing body or member violated sunshine, the court shall:
  - Subject the member up to \$1,000 fine.
  - **If** court finds it was a **knowing violation**, **may** order the member to pay all costs and reasonable attorney fees.
- If court finds that governing body or member **purposefully** violated sunshine:
  - Subject the member up to \$5,000 fine.
  - **Shall** order the member of governing body to pay all costs and reasonable attorney fees.
- **Knowing vs. Purposeful:** “knowing violation requires that the public governmental body had actual knowledge that the Sunshine Law required production but did not produce the record. A purposeful violation involves proof of intent to defy the law or achieve further some purpose by violation the law...” *Laut v. City of Arnold*, 491 S.W.3d 191, 200 (Mo. 2016) (Court found that because City believed report was a closed personnel record, City did not knowingly violate sunshine law by not turning over report that Court found to be an open criminal investigation report).

## LAW ENFORCEMENT (“L.E”) RECORDS

- L.E. agencies are required to maintain records of all reported incidents, investigations, and arrests made. § 610.100.2.
- MOST critical distinction are the three “special types” of records:
  - Arrest reports;
  - Incident reports; and
  - Investigative reports.
- Note: A single document could be all 3 – definitions of each type of record is based on content; not the name of the document.
- Arrest reports are generally OPEN.
  - An “arrest report” is a record of a L.E. agency of an arrest and any detention or confinement and the charge. § 610.100(2).
  - “Arrest” is an actual restraint of a person or his or her submission to the custody of an officer *for a criminal violation that results in issuance of summons or person being booked*. § 610.100.1(1). (*cf.* § 544.180 RSMo.).
  - Unless person is not charged within thirty days, then only the “disposition portion of the record may be accessed” and subject to § 610.120.

- Incident reports are generally OPEN.
  - A record of a L.E. agency pertaining to a “crime or incident” that consists of:
    - Date,
    - Time,
    - Specific location,
    - Name of victim, and
    - Immediate facts and circumstances surrounding the initial report of the “crime or incident.”
    - Includes the daily “log book”
      - § 610.100.1(4); *State ex rel. Goodman v. Board of Police Commissioners*, 181 S.W.3d 156 (Mo. App. 2005).
  
- Investigative reports are generally CLOSED, *unless and until the investigation is “inactive.”*
  - “Investigative report”: a record that is:
    - Not an arrest or incident report, and
    - Prepared by personnel of L.E. agency inquiring into a crime or suspected crime, either in response to incident report or in response to “evidence developed by [L.E.Os] in the course of their duties” § 610.100.1(5).
      - Note - these particular records do not have to be prepared by actual officers.
  - Inactive: an investigation in which no further action will be taken by a law enforcement agency for the following reasons:
    - Decision by the agency not to pursue the case,
    - Statute of limitations or 10 years after commission of offense, whichever is earlier, or
    - Finality of conviction of all persons convicted. § 610.100.1(3).
  
- Mobile video recordings: “any system or device that captures visual signals that is capable of installation and being installed in a vehicle or being worn or carried by personnel of a law enforcement agency and that includes, at minimum, a camera and recording capabilities.” § 610.100.1(7).
  - Authorized to be closed if recorded in a nonpublic location –
    - A complete, clean copy must be provided upon written request to “any person who is depicted in the recording or whose voice is in the recording, a legal guardian or parent of such person if he or she is a minor, a family member of such person within the first degree of consanguinity if he or she is deceased or incompetent, an attorney for such person, or insurer of such person.” § 610.100.2(4)
  
- **May close/redact portion of an open record if** information “*is reasonably likely to pose a clear and present danger to the safety of any victim, witness, undercover officer, or other person; or jeopardize a criminal investigation*, including records which would disclose the identity of a source wishing to remain confidential or a suspect not in custody; or which would disclose techniques, procedures, or guidelines for law enforcement investigations or prosecutions.” § 610.100.3.

- Except:
  - “any person, including a legal guardian or a parent of such person if he or she is a minor, family member of such person within the first degree of consanguinity if such person is deceased or incompetent, attorney for a person, or insurer of a person involved in any incident or whose property is involved in an incident, may obtain any records closed pursuant to this section or section 610.150 for purposes of investigation of any civil claim or defense, as provided by this subsection.” § 610.100.4.
  - “Any person may bring an action pursuant to this section in the circuit court having jurisdiction to authorize disclosure of a mobile video recording or the information contained in an investigative report of any law enforcement agency, which would otherwise be closed pursuant to this section. The court may order that all or part of a mobile video recording or the information contained in an investigative report be released to the person bringing the action.” § 610.100.5.
  - “The victim of an offense as provided in chapter 566 may request that his or her identity be kept confidential until a charge relating to such incident is filed.” § 610.100.7.
- Record becomes closed if: Defendant found not guilty, receives SIS, or case is dismissed. § 610.105.
  - *State ex rel. Pulitzer v. Seay*, 330 S.W.3d 823 (Mo. App. 2011).
- 911 calls are inaccessible to the public. § 610.150.
- Fees for law enforcement records are governed by § 610.026. See above.

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