



## Maneke law column

# In matters of public record law

Your calls to the hotline are great sources of column ideas. Often, what one person asks is a question other reporters in the state have. So this month, let's look at two of those questions in depth.

First, let's look at the Missouri State Highway Patrol Public Records Request form. As you know, there is **NO** requirement that a public record request be put in writing (an oral request carries the same weight as a written request). But putting it in writing does allow you to prove what you asked for and when you asked for it. Similarly, there is no need to explain, generally, **WHY** you are making a records request – the reason you want information doesn't change the public body's duty to provide it to you.

Still, this Patrol record form specifically asks "Reason for Request" and notes that you are required to answer the question. And there's a simple answer you should always put in that box. Your answer should be "For public safety. See 18 USC 2721 (b) (14)."

Perhaps the reason for this question is that if you are a family member or attorney, among others, you may be entitled to get unredacted copies of accident reports, because the Highway Patrol is permitted in certain circumstances to redact certain information from its accident reports. So, perhaps the Patrol is seeking to determine if you are entitled to an unredacted report. But still, in answering this question, you don't need to detail the journalistic purpose for your request.

The second question was asked more frequently when the grand jury was

convened in St. Louis over activities in Ferguson. What are the rules regarding grand jury activities? What can a reporter access from a grand jury?

A grand jury in state court begins with a traditional call to citizens to report for jury duty. Citizens report to the courthouse and 12 persons are selected. But rather than serving for only a few days as in most regular trials, grand jurors generally are scheduled to serve a term of three to six months. Their role is to investigate criminal actions and determine if charges should be filed. Nine of the 12 jurors must vote in favor of the determination. (Note: Federal grand juries in Missouri are comprised of 16 to 23 members who serve up to 18 months, and for an indictment to issue, 12 votes in favor are

required.)

The activities of the grand jury are not open to the public, and jurors and witnesses take an oath to keep confidential the proceedings, on penalty of being charged with a crime. (However, there is U.S. Supreme Court case law suggesting it may not be permissible to prohibit witnesses from ever disclosing their testimony before a grand jury, due to First Amendment considerations. And certainly there's no prohibition of a witness talking to the media prior to a grand jury appearance.)

Persons who are investigated by a grand jury are not allowed to be present to hear testimony against them. The prosecuting attorney acts as an advisor to the grand jurors, but cannot be present during deliberations and votes. The prosecutor often serves to guide the grand jury, but jurors have the power to select other persons to appear

and testify. Proceedings are generally not recorded or transcribed, although a Missouri Court of Appeals has held that minutes of a grand jury at times may be disclosed. And of special note is that in the case of the Ferguson grand jury, the prosecuting attorney was persuaded that his file and grand jury transcripts were investigative records of an "inactive" case, therefore subject to access under the Sunshine law.

The general rules of evidence don't apply before a grand jury, so there are no limitations as to what may be presented as evidence. And a grand jury may grant a witness immunity from prosecution in return for compelling his or her testimony in regard to a matter.

Once a determination is reached that charges should be pursued, the case is bound over to the circuit court. If probable cause is found, the indictment is called a "true bill." If no probable cause is found, the determination is called a "no true bill." It is not unusual for indictments to be kept confidential until the suspect is in custody.

This process is a substitute for the prosecuting attorney presenting evidence in a preliminary hearing in court open to the public that the defendant may attend with counsel, cross-examine witnesses and attempt to persuade a judge that there is not sufficient evidence to warrant binding the defendant over to trial.

Finally, it is interesting to note that some experts think that this means a grand jury case is weaker than a preliminary hearing case because using the grand jury blocks the ability of the defendant to persuade the court that the evidence is insufficient to proceed with prosecution.



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