



Missouri Sunshine Law

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Disclaimer

This presentation does not constitute a formal opinion or an on-the-record position of the Attorney General, or legal advice from the Attorney General or the presenter.



Democracy Quote

“Democracies die behind closed doors. When government begins closing doors, it selectively controls information rightfully belonging to the people. Selective information is misinformation.”

*-Judge Damon Keith, U.S. Court of Appeals
Detroit Free Press v. Ashcroft
No. 02-1437 (6th Cir. Apr. 19, 2002)*



What is the Sunshine Law?

Construction of the Sunshine Law

- 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.
- Takeaway: “public business” is the “public’s business”



To Whom Does the Sunshine Law Apply?

Public Governmental Bodies



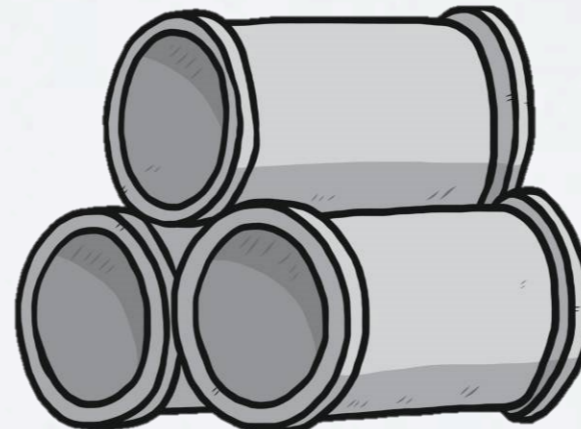
Municipalities



Counties



Police Departments



Sewer Districts



Committees



What is a Public Governmental Body?

Public Governmental Bodies

- 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.
- “By its very nature, the quintessence of a ‘public governmental body’ is the power to govern by the formulation of policies and the promulgation of statutes, ordinances, rules and regulations, or the exercise of quasi-judicial power.”
 - *Tribune Publishing Co. v. Curators of Univ. of Missouri*, 661 S.W.2d 575, 584 (Mo. App. W.D. 1983).



What about Sub-Committees of a Public Governmental Body?

Sub-Committees of Public Governmental Bodies

- “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...”



Not covered by the Sunshine Law?

Non-public governmental bodies

Common examples:

- Private entities
- Homeowners associations
- Non-Missouri governmental entities
- Judicial entities when not operating in an administrative capacity
- Non-profit corporations
 - Unless qualifying as a quasi-public governmental body, § 610.010(4)(f)
- Most individual employees or Board members
 - *State ex rel. Moore v. Brewster*, 116 S.W.3d 630, 636 (Mo. App. W.D. 2003) (individual Board members and President are not governmental bodies)
 - Note: *Charlier v. Corum*, 774 S.W.2d 518 (Mo. App. W.D. 1989) (Sheriff is a public governmental body)



Public Meetings



Public Meetings

Public Meeting Definition

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



Public Meetings

Public Meeting Definition (continued)

- 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.



Public Meetings

What is not a public 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.

Colombo v. Buford, 935 S.W.2d 690 (Mo. App. W.D. 1996)

- Event is “totally unstructured” with “no agenda”
- No one “gaveled the occasion to order”
- People “did not take turns talking to the entire group”
- No “trappings of an official meeting”
- No vote “was taken or any policy established”



Public Meetings

Types of public meetings

- Two types: Open and closed
- Sunshine Law does not define or reference other common terms such as “executive session,” “special session,” or “work session”
- Best practice: use only “open” or “closed” to avoid confusion



Public Meetings

Public meeting notice requirements

- A notice must be posted at least twenty-four hours in advance of all public meetings, both open and closed:
 - Prominent place, easily accessible to the public
 - Do not count weekends and holidays towards the twenty-four hours
- Emergency or short-notice meetings:
 - Still must post a meeting notice as soon as practicable
 - Explain the reason for holding the meeting on short notice
- Location requirements:
 - A place that is “reasonably accessible to the public”
 - A place that is “of sufficient size to accommodate the anticipated attendance.”



Public Meetings

Public meeting notice requirements

- Notice must include:
 - Time
 - Date
 - Place
 - Tentative Agenda
 - If the meeting will be conducted by telephone or electronic means, include the location the public may observe and attend the meeting



Public Meetings

Tentative agenda requirement

Potentially insufficient agenda

- Unfinished business
 - Budget
 - Park permits
- New business
 - Grants
 - Nominations
 - City Hall parking lot

Likely sufficient agenda

- Unfinished business
 - City budget proposals for Police Department
 - Park permits: New Year's Eve Fireworks
- New business
 - Federal grant funding for road improvements
 - Nominations to Board task force on education
 - Draft the RFP for the City Hall parking lot resurfacing project



Public Meetings

Recording meetings

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



Public Meetings

Meeting minutes

- Meeting minutes must include the following information:
 - Date
 - Time
 - Place
 - Members present/absent
 - Record of all votes taken (including a vote to close a meeting)
 - Roll call votes must specify each member's individual vote
 - Citation to Section 610.021 subsection used to close a meeting
 - If applicable, the “good cause” to hold a meeting on less than 24 hours' notice

Best practice: be narrative and detailed about topics discussed

§ 610.020.7, [Page 35]



Public Meetings

Best practices for all public meeting notices

- Post meeting notices and agendas in an area that is accessible to the public even after business hours, and consider posting more than one physical notice
- Post a notice online whenever possible
 - This is required for online meetings, § 610.020.1
- Include the date and time the notice and agenda was posted
- Include the name and contact information of the Records Custodian

Be as specific as possible when drafting tentative agenda items



Closed Meetings

Usually permissive, rarely mandatory

- “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 25 separate reasons to close meetings within 610.021
- Not just a best practice, a requirement:
 - All business must remain open unless specifically authorized to be closed
- Liability most often happens for improper closure, not for over *disclosure*



Closed Meetings

Common closed meeting authorizations

- 610.021(1) Legal*
- 610.021(2) Real Estate*
- 610.021(3) Hiring, Firing, Disciplining or Promoting*
- 610.021(6) Scholastic Records
- 610.021(11) Bid Process*
- 610.021(12) Sealed Bids & Contracts*
- 610.021(13) Personnel Records
- 610.021(14) Prohibited from disclosure by law
 - Cannot stand alone; must be used in conjunction with another law
- 610.021(17) Auditor communications and work product

Keep in mind some subsections in § 610.021 have event-based cutoffs to open certain items in the future

§ 610.021, [Pages 35-39]



Closed Meetings

How to close a meeting

“The statute sets forth two methods:

- 1) a public governmental body may vote, by an affirmative public vote of a majority of a quorum of the body, to close a meeting; or
- 2) a public governmental body may give notice of its intention to hold a closed meeting and cite a specific exception from § 610.021.”

Kansas City Star Co. v. Fulson, 859 S.W.2d 934, 942 (Mo. App. W.D. 1993)

Only close a portion of the facility used for the closed meeting.

Only discuss the business necessary that justifies a meeting’s closure.



Closed Meetings

Best practices for closed meetings

- While the two subsections of Section 610.022 appear to operate independently, it may be useful for an agency to apply both 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
- Stick to the topic at hand – do not deviate from the limited reason authorized to close a meeting



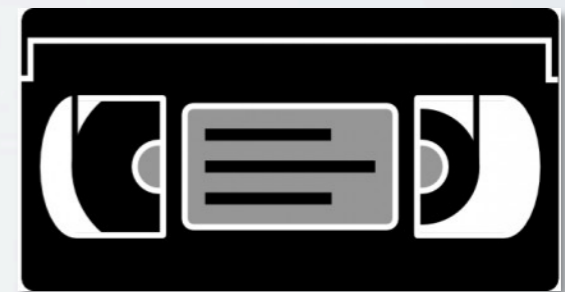
Public Records



What Is a Public Record?

“Any record, whether written or electronically stored, retained by or of any public governmental body”

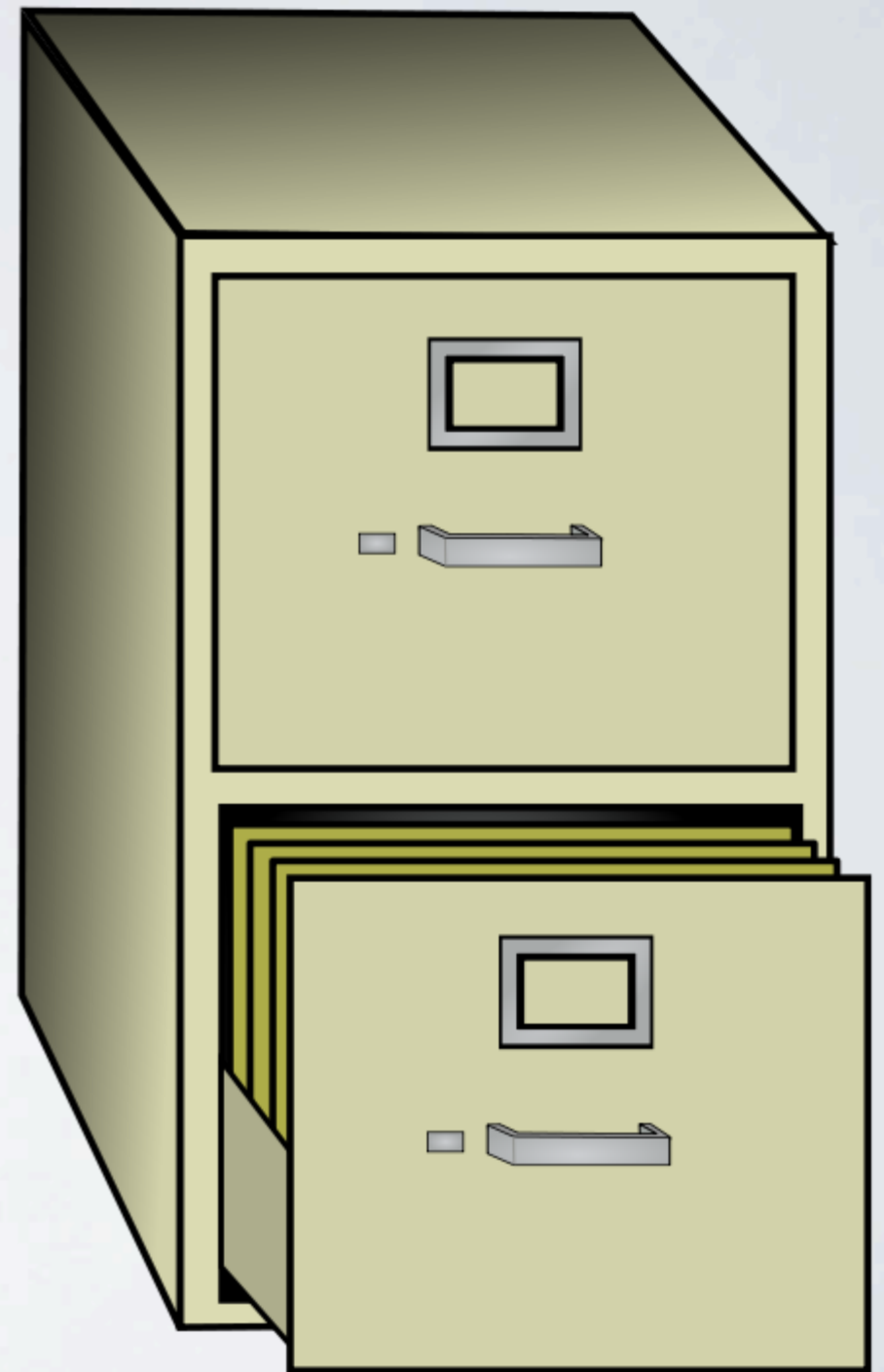
Courts construe “record” broadly, such as “something that serves to record”



What Records Must Be Retained?

Chapter 109, RSMo
governs retention
obligations

The State Records Commission
and the Local Records Board
adopt records retention schedules



Public Records

Electronic Transmission of Public Records

- May be considered a public record if...
 - Sent to a quorum of officials, which includes the sender; and
 - Relating to public business
- If the message meets the above requirements, best practice is to send to member's government-issued device, or to the custodian of records
- Best practice: each member of a public governmental body should have a government-issued email account



Requests for Public Records

Submitting open records requests

- A requester can submit an open records requests in multiple ways:
 - Letter
 - Email
 - Phone Call
 - In person
- Sunshine Law does not require a specific submission method
- Public governmental body must act on the request as soon as possible, no later than 3 business days after custodian receives it



Requests for Public Records

Submitting open records requests

- Address request to the custodian of records by name or by title
 - *Starr v. Jackson Cnty. Prose. Att'y*, 635 S.W.3d 185 (Mo. App. W.D. 2021)
- Phrase request with specificity using “language that a reasonably competent custodian of the records would understand.”
 - *Anderson v. Vill. of Jacksonville*, 103 S.W.3d 190 (Mo. App. W.D. 2003)
- Best-practice examples:
 - Date ranges
 - Names or titles of employees
 - Topics of the documents
 - Include a fee threshold
 - Requested format: in-person access, papers copies, electronic documents



Requests for Public Records

Responding to open records requests – Initial Response

- Public governmental body must act on the request as soon as possible, no later than 3 business days after custodian receives it
- If records are not provided in that 3-day period:
 - “Give a detailed explanation of the cause for further delay”
 - Provide “the place and earliest time and date that the record will be available for inspection”
 - There must be a “reasonable cause” for the delay
- Best practice, if possible: Address any fee estimates in the initial response letter (see future slide)
- Best practice, if possible: Do the initial search and estimate how many documents may be responsive, and identify that in the letter



Requests for Public Records

Responding to open records requests – Best Practices

- All employees should know the identity of the custodian of records
- Employees should forward public records requests to the custodian
- Records can be held in more than one location, especially electronically. A diligent search of all locations must be done.
- Contact the requestor in writing
- Note the day the initial 3-day response was sent
- Confirm the body's understanding of what is being requested and engage with the requester to clarify any items Address possible fees
- Confirm the way that records will be produced
- Be very specific when explaining reasons why records cannot be provided within 3 business days



Requests for Public Records

Responding to open records requests - Production

- 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
- Redact when possible instead of closing an entire record
- Obvious reasons for closure (e.g., work product) are encouraged to be stated on the document itself when it is created
- 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 body.
 - *Jones v. Jackson County Circuit Court*, 162 S.W.3d 53 (Mo. App. W.D. 2005)



Requests for Public Records

Closed records

- Same provisions of § 610.021 apply
- If records responsive to a request are closed, provide a response that generally describes the material exempted, unless that description would reveal the contents of the exempt information
- Redact when possible instead of withholding an entire record
- The requestor may request, and the custodian shall provide, a written statement of the grounds for denial of a request, including specific subsection of § 610.021 used to close records



Requests for Public Records

Best practices for responding to public records requests

- Sunshine Law policy under Section 610.028 can be detailed, so consider including provisions about the search process and fee structure
- Visit the Attorney General's Office website for a sample Sunshine Law policy under Section 610.028
- When closing records, provide information to the requestor about what documents have been closed in the final response letter
 - Must always provide a "written statement of the grounds for denial (closure)" under Section 610.023.4 upon request within 3 business days
- Remember, Sunshine Law violations almost always happen for "over closing," not "over disclosing." Closure is almost always permissive and not mandatory.



Requests for Public Records

Best practices for responding to public records requests

- Immediately forward a copy of the request to custodian of records
- Contact the requestor in writing so that both parties have a copy of the response
- Note the day the initial 3-day response was sent
- Confirm the body's understanding of what is being requested and engage with the requester to clarify any items when clarity is needed
- Address possible fees
- Confirm the way that records will be produced
- Be very specific when explaining reasons why records cannot be provided within 3 business days



Law Enforcement and the Sunshine Law

Section 610.100 - Scope

- Not specifically defined
- Potential scope: any public governmental body with law enforcement powers and possesses records that are set forth in Section 610.100
- Examples:
 - Sheriff's Office, including the Sheriff as a separate body
 - Police Department
 - Medical Examiner, *News-Press and Gaz. Co. v. Cathcart*, 974 S.W.2d 576 (Mo. App. W.D. 1998)



Law Enforcement and the Sunshine Law

Arrest records

- Section 610.100.1(2): “a record of a law enforcement agency of an arrest and any detention or confinement incident thereto together with the charge therefor”
- Arrest records shall be open records
- If a person is arrested and not charged within 30 days of arrest, the arrest report then shall be closed, except that the “disposition portion of the record may be accessed”



Law Enforcement and the Sunshine Law

Incident reports

- Section 610.100.1(2): “a record of a law enforcement agency consisting of the date, time, specific location, name of the victim and immediate facts and circumstances surrounding the initial report of a crime or incident, including any logs of reported crimes, accidents and complaints maintained by that agency”
- Incident reports shall be open records
- A complaint alleging criminal misconduct by a police officer is an “incident report” under Section 610.100 and not personnel records
 - *Guyer v. City of Kirkwood*, 38 S.W.3d 412 (Mo. 2001)
- An incident report consists of only the information specified in the statutory definition; it does not include other information, such as phone numbers and addresses, which are not subject to disclosure
 - *State ex. rel. Goodman v. St. Louis Board of Police Commissioners*, 181 S.W.3d 156 (Mo. App. E.D. 2005)



Law Enforcement and the Sunshine Law

Investigative reports

- Section 610.100.1(2): “a record, other than an arrest or incident report, prepared by personnel of a law enforcement agency, inquiring into a crime or suspected crime, either in response to an incident report or in response to evidence developed by law enforcement officers in the course of their duties”
- Investigative reports shall be closed records “until the investigation becomes inactive,” then become open, but are often authorized to be closed at other stages
- “Inactive” means:
 - A decision by the law enforcement agency not to pursue a case
 - Expiration of statute of limitations
 - Finality of convictions



Law Enforcement and the Sunshine Law

Mobile video recordings

- Defined as “any data captured by a mobile video recorder, including audio, video, and metadata.”
- Closed until the investigation becomes inactive
- But, a recording that is recorded in a “nonpublic location” is authorized to be closed, except any person who is depicted or heard in the recording (and certain familial relations) may obtain a complete copy of the recording



Law Enforcement and the Sunshine Law

Effects of Nolle Pros, Dismissal, and Suspended Impositions of Sentence (SIS)

- If the person arrested is charged but the case is subsequently nolle prossed, dismissed, or the accused is found not guilty or imposition of sentence is suspended in the court in which the action is prosecuted, official records pertaining to the case shall thereafter be closed records when such case is finally terminated.
- Suspended Imposition of Sentence records are open until the individual completes probation, at which time they become closed.



Common Sunshine Law Issues



Common Sunshine Law Issues

Common findings in Missouri State Auditor reports

- Lack of Sunshine Law policies and procedures
 - See requirement in § 610.028 for written Sunshine Law policy
- No custodian of records
- Meeting notice/agenda issues:
 - Agenda not included
 - No documentation of when notice was posted
- Meeting minutes issues:
 - Items absent: meeting time, date, location, members present and absent
 - Votes not recorded
 - Improper or missing citations to § 610.021 provisions for closed sessions

Improper closed sessions, deviating from closed topics



Questions?



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