

## Reviewing basics of Sunshine Law



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Summer is coming, and as I write this, the Missouri Legislature is winding down its session. I'll write next month about any new provisions in Missouri law that will impact open records and meetings.

In the meantime, I've been asked to do a short primer on the law for folks who haven't heard me speak on it a hundred times. If you have summer interns, they might benefit from the material in this month's column.

The basic premise of chapter 610, Missouri's Sunshine Law, is contained in the section that says it is the public policy of the state that meetings, records, votes, actions and deliberations of public governmental bodies be open to the public.

In general, public governmental bodies are entities created by statute or ordinance, or committees appointed by such bodies which report back to the bodies regarding the expenditures of public funds. Also included are quasi-public bodies, which are generally entities which contract with public bodies or entities which spend public funds or act on behalf of public bodies.

Public records are records — including electronic records — that are being held by a public body.

Public bodies must give notice of all meetings 24 hours in advance, giving date, time and place of the coming meeting and posting an agenda of matters to be considered.

Minutes must be taken of all open meetings. All votes taken in meetings must be recorded and if they are roll-call votes, they must be recorded in that format. (All votes taken in closed meetings must be roll-call votes.)

Closed meetings are permitted under some circumstances, but never required. (Similarly, there is no requirement that members of public bodies keep confidential what is said in closed meetings.)

In order to close a meeting, or in order to close a record, a body must cite one of the 21 exceptions contained in Section 610.021.

If the reason for closing the meeting is exception 1, the "litigation" exception, the records and votes must be made public after the matter is finally settled.

Public bodies generally are not permitted to have confidentiality clauses in settlement agreements, unless a court order closes the agreement. Even in those cases, the amount paid must be made public.

If the reason for closing the meeting is exception 2, the "real estate" exception, the body must actually be leasing, purchasing or selling real estate and there must be a need to keep confidential the amount being offered for the property.

If the reason for closing the meeting is exception 3, the body needs to be talking about personal information about an actual employee. The only subjects that can be discussed are hiring, firing, disciplining and promoting. Other issues cannot be discussed in closed session. Votes must be made public within 72 hours after they are taken.

There are other exceptions, but these are the key three most often cited. When a body decides to hold a closed meeting, it needs to vote in open session by roll call vote to hold the closed meeting, putting in the minutes the exception that is being used. Notice of the closed meeting must also be posted 24 hours in advance.

A body must appoint a custodian of records. All requests for records must be directed to that person. The custodian must respond to requests for records no later than 72 hours after the request is received. The response must be that access is available, that access will not be granted (citing the exception allowing the records to be

closed) or that the custodian needs additional time to obtain the records. If part of the record is closed and part is open, the custodian must separate the parts, making the open part available.

The custodian may charge a fee for copies of records produced. Fees must be reasonable and not exceed the actual cost of search and duplication. No fee may be charged if only access is given and no copy is requested.

There are only three kinds of criminal records: Incident reports, arrest reports and investigative reports.

Incident reports and arrest reports are open records. Incident reports include the date, time, specific location, name of the victim and immediate facts and circumstances surrounding the initial report of a crime. Arrest reports record an arrest, with the charge.

Anything else is considered an investigative report, and they are closed until the investigation is inactive, which means law enforcement will not pursue the case, the time to file charges has expired, or a conviction based on the report is final.

If a court record is closed because the person arrested is found not guilty or receives a suspended imposition of sentence, or because the case is nolle prossed or dismissed, then the final action of the court or prosecutor must be made available to the public.

This is a simplified summary of the law, but I recently was reminded that it is important to do this occasionally for new staff members. I encourage you to keep this basic primer around the newspaper office for just such purposes.

I am always happy to ship out copies of the Attorney General's Sunshine Law handbook for your staff if you'll call and let me know how many you need. My number is (816) 753-9000.