

OPEN GOVERNMENT GUIDE

Access to Public Records
and Meetings in

MISSOURI

**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

Sixth Edition
2011

OPEN GOVERNMENT GUIDE

OPEN RECORDS AND MEETINGS LAWS IN

MISSOURI

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**SIXTH EDITION
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Previously Titled
Tapping Officials' Secrets

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Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

Following the outline. Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, www.rcfp.org/ogg. The Internet version of the outlines allows you to search the database and compare the law in different states.

Updates: The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at www.rcfp.org/ogg. This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.

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FOREWORD

Two statutes govern access to government meetings and records in Missouri: (1) a statute commonly known as the Sunshine Law, Mo.Rev.Stat. § 610.010-.035 (together with the separately named Arrest Records Law, Mo.Rev.Stat. §§ 610.100-.126), originally enacted in 1973; and (2) the Public Records Law, Mo.Rev.Stat. §§ 109.180-.190, originally enacted in 1961.

The Sunshine Law governs access to government meetings, records and votes. It imposes a general rule requiring public access to meetings, records, votes, actions and deliberations of public governmental bodies. Mo.Rev.Stat. § 610.011. However, the Sunshine Law enumerates certain exceptions to the general rule. Mo.Rev.Stat. § 610.021. Under the Sunshine Law, public access to government meetings or records may be denied only to the extent specifically authorized by the Sunshine Law or other statutes. Generally, matters within an enumerated exception are not automatically closed. Even if a record or proceeding may be closed it remains open until formally closed. The Sunshine Law was amended in 1994, however, to prohibit disclosure by an “executive agency” of records “closed by law” to the extent disclosure would allow identification of individual persons or entities, except in certain instances. *See* Mo.Rev.Stat. § 610.032. *But see* Mo.Rev.Stat. § 610.022.4 (“Nothing in sections 610.010 to 610.028 shall be construed as to require a public governmental body to hold a closed meeting, record or vote . . .”); *Chasnoff v. Board of Police Commissioners*, 334 S.W.3d 147, 151 (Mo.Ct.App. 2011) (“Nothing in section 610.021 mandates the closure of records”). An “executive agency” is defined broadly to include state administrative agencies, boards of regents or of curators of public colleges and universities, and subdivisions or agents of such administrative agencies. *See* Mo.Rev.Stat. § 610.032.5; Mo.Rev.Stat. § 172.180. With the aid of computer-assisted research we have attempted to include those statutes that specifically close records or proceedings. We cannot guarantee we identified all of them, and the legislature continues to add to the list of prohibited disclosures.

The Public Records Law is more limited than the Sunshine Law, and only applies to government records that are kept pursuant to statute or ordinance. Mo.Rev.Stat. § 109.180. Moreover, access under the Public Records Law is subject to reasonable regulations by the government agencies affected. Although the Sunshine Law is broader than the Public Records Law, and generally every record that could be obtained under the Public Records Law could also be obtained under the Sunshine Law, the Public Records Law remains significant. A statute may expressly exempt certain government records from the Sunshine Law, but fail to address the Public Records Law. *Cf.* Missouri Development Finance Board Act, Mo.Rev.Stat. § 100.296.

Open Records**I. STATUTE -- BASIC APPLICATION****A. Who can request records?****1. Status of requestor.**

Any member of the public can request public records under the Sunshine Law, Mo.Rev.Stat. §§ 610.010-.030. Access is not limited to United States, Missouri or community citizens. *State ex rel. Board of Public Utilities of City of Springfield v. Crow*, 592 S.W.2d 285, 289 (Mo. Ct.App. 1979) (the Sunshine Law confers rights on the general public and not upon any particular segment or representative of the general public). However, only Missouri citizens may request public records pursuant to the Public Records Law, Mo.Rev.Stat. § 109.180 (“[r]ecords kept pursuant to statute or ordinance shall . . . be open for a personal inspection by any citizen of Missouri”).

2. Purpose of request.

The requester’s purpose generally does not affect his or her right to receive records under either the Sunshine Law or the Public Records Law. *See, e.g., In re Transit Casualty Co.*, 435 S.W.3d 293, 300 (Mo. banc 2001) (“Citizens of Missouri have the right to inspect and copy any public record even if there is no apparent legal interest to be subserved”); *State ex rel. Pulitzer Missouri Newspapers, Inc. v. Seay*, 330 S.W.3d 823 (Mo.Ct.App. 2011); *State ex rel. Gray v. Brigham*, 622 S.W.2d 734, 735 (Mo.Ct.App. 1981).

In the case of a number of statutory exemptions from the disclosure requirements of the two open records acts, access to records is restricted to those with a direct and tangible interest in the records. *See, e.g., Vital Records Act*, Mo.Rev.Stat. § 193.245 -.246.

3. Use of records.

The subsequent use to be made of information obtained under the Sunshine Law or Public Records Law is generally not restricted. However, in a number of statutory exceptions, information from records can only be used for “legitimate research purposes.” *See, e.g., Vital Records Law*, Mo.Rev.Stat. § 193.245(3).

B. Whose records are and are not subject to the act?

By definition, the Sunshine Law applies to “public governmental bodies” and “quasi-public governmental bodies.” Mo.Rev.Stat. § 610.011. The definition of public governmental bodies includes the traditional branches of state government, as well as The Curators of the University of Missouri and other governing bodies of any institution of higher learning that is supported in whole or in part from state funds. Mo.Rev.Stat. § 610.010(4)(a).

1. Executive branch.**a. Records of the executives themselves.**

Records of the executives themselves, the governor, mayors, and other chief executive persons or bodies, are subject to public inspection under the Sunshine Law. *See MacLachlan v. McNary*, 684 S.W.2d 534, 537 (Mo.Ct.App. 1984) (county executive, a single member executive body, may be a “public governmental body” under the Sunshine Law); *Tipton v. Barton*, 747 S.W.2d 325 (Mo.Ct.App. 1988) (city coordinator, chief assistant to mayor, is a “public governmental body” under the Sunshine Law); *Hemeyer v. KRCG-TV*, 6 S.W.3d 880 (Mo. banc 1999) (a sheriff’s videotape of the booking of a suspect is a ‘retained public record’ under Mo.Rev.Stat. § 610.010(6)). Records of executives are subject to public inspection under the Public Records Law only if those records are required by statute or ordinance. Mo.Rev.Stat. § 109.180.

Administrative bodies are also subject to the Sunshine Law. Mo.Rev.Stat. § 610.010(4). *See Tipton v. Barton*, 747 S.W.2d 325, 329 (Mo.

Ct.App. 1988) (“[a]n earlier definition of ‘public governmental body’ . . . was amended in 1978 and again in 1982 to specifically include administrative or executive bodies.”); *MacLachlan v. McNary*, 684 S.W.2d 534, 538 (Mo.Ct.App. 1984) (“it is unnecessary that an entity have binding authority for it to be subject to the Sunshine Law. It is within the meaning of the law if its determinations affect the public.”) Administrative bodies are also subject to the Public Records Law, if the records of those administrative bodies are kept pursuant to statute or ordinance.

b. Records of certain but not all functions.

Under the Sunshine Law, records of the executive branch are subject to disclosure if they reflect deliberations or decisions that in any way affect the public. *MacLachlan v. McNary*, 684 S.W.2d 534, 538 (Mo.Ct.App. 1984). In contrast, the Public Records Law does not call for a functional approach to disclosure of government records. Rather, it requires disclosure of any record required to be kept pursuant to statute or ordinance, whether that record relates to preliminary fact-finding, deliberations, or decision-making.

2. Legislative bodies.

Legislative bodies are subject to the Sunshine Law. Mo.Rev.Stat. § 610.010(4) (definition of “public governmental body” includes any legislative governmental entity created by the constitution, statutes, order or ordinance).

3. Courts.

The Sunshine Law does not apply to court records, except where the courts are acting in an administrative capacity. Mo.Rev.Stat. § 610.010(4). See *Remington v. City of Boonville*, 701 S.W.2d 804, 807 (Mo.Ct.App. 1985) (1982 amendment removed the judiciary from the operation of the Sunshine law). However, Article 1, § 14 of the Missouri Constitution provides that “the courts of justice shall be open to every person,” and Mo.Rev.Stat. § 476.170 provides that “the sitting of every court shall be public and every person may freely attend the same.” See also, Court Operating Rule 2. Moreover, the Missouri Supreme Court has recognized a qualified common law right of access to court records. *In re Transit Casualty Co.*, 435 S.W.3d 293, 300 (Mo. banc 2001) (“It is undisputed . . . that there is a common law right of public access to court and other public records”). See *In Re Midwest Milk Monopolization Litigation*, 405 F.Supp. 118, 121 (W.D.Mo. 1975) (“the notion that a reporter is free to report only that which transpires in the courtroom, as distinguished from data in the open files of a court, is untenable. The First Amendment protects the right to report pleadings and other data contained in the open files maintained by the clerk’s office, all of which are available for examination by the general public”).

The Attorney General has stated that boards of jury commissioners are public governmental bodies acting in administrative capacities, and if a board retains a list of prospective or qualified jurors, it must provide copies pursuant to a Sunshine Law request. (AG Opinion No. 106-2001).

Mo.Rev.Stat. § 211.321 provides that court records that identify juveniles must be kept confidential. An otherwise open record containing information that identifies a juvenile must be redacted to remove all such identifying information before the remainder of the record is released. (AG Opinion No. 37-2003).

4. Nongovernmental bodies.

a. Bodies receiving public funds or benefits.

The Sunshine Law by its terms extends only to “public governmental bodies” — Mo.Rev.Stat. § 610.010(4) — and “quasi-public governmental bodies” — Mo.Rev.Stat. § 610.010(4)(f). Entities, such as charitable groups, that are not an arm of state government or are not an arm of a government that derives its power from the state and do not meet the criteria of a quasi-public governmental body are not subject to the Sunshine Law simply because they receive state support.

b. Bodies whose members include governmental officials.

See (a), above. Non-governmental entities are not covered by the Sunshine Law simply by virtue of the fact that governmental officials advise them or sit on their boards unless they meet the criteria outlined in Mo.Rev.Stat. § 610.010(4).

5. Multi-state or regional bodies.

Records of a public governmental body relating to multistate or regional bodies (such as planning authorities) are subject to the Sunshine Law to the extent they are retained by that public governmental body. Mo.Rev.Stat. § 610.010(4). The Sunshine Law, Mo.Rev.Stat. § 610.010(4)(g), has been amended to expressly include bi-state development agencies established pursuant to Mo.Rev.Stat. § 70.370. *But see KMOV-TV, Inc. v. Bi‑State Development Agency of the Missouri-Illinois Metro Dist.*, 625 F. Supp. 2d 808 (E.D.Mo. 2008) (approval by the Illinois legislature is required in order to apply the Sunshine Law to Bi‑State).

6. Advisory boards and commissions, quasi-governmental entities.

Advisory boards are subject to the Sunshine Law. Mo.Rev.Stat. § 610.010(4)(e); *MacLachlan v. McNary*, 684 S.W.2d 534 (Mo.Ct.App. 1984) (holding that Annexation Study Commission, which considered and recommended changes in delivery of governmental changes to County Executive, is subject to Sunshine Law).

Quasi-public governmental bodies are subject to the Sunshine Law. Mo.Rev.Stat. § 610.010(4)(f) (definition of “public governmental body” includes “quasi-public governmental bodies”); *Remington v. City of Boonville*, 701 S.W.2d 804, 806-807 (Mo.Ct.App. 1985).

Quasi-public governmental bodies include religious and charitable associations, urban development corporations and general not-for-profit corporations organized or authorized to do business in this state under the provisions of Chapters 352, 353 and 355, Mo.Rev.Stat., respectively, and unincorporated associations which have as their primary purpose either (1) to enter into contracts with public governmental bodies or (2) to engage primarily in activities carried out pursuant to an agreement or agreements with public governmental bodies. Mo.Rev.Stat. § 610.010(4)(f). See *North Kansas City Hospital Board of Trustees v. St. Luke’s Northland Hospital*, 984 S.W.2d 113, 117-188 (Mo.Ct.App. 1998) (holding that non-profit health corporation that managed physician practices and operated medical facilities for municipal hospital under direction of hospital’s Board of Trustee was “engaged primarily in activities carried out pursuant to an agreement” with the Board and was therefore a quasi-public governmental body subject to the Sunshine Act.)

Quasi-public governmental bodies do not include urban redevelopment corporations which are privately owned, operated for profit, and do not expend public funds. Such urban redevelopment corporations are not subject to the Sunshine Law. Mo.Rev.Stat. § 610.010(4). However, redevelopment corporations that have the power to exercise eminent domain, allocate or issue tax-free debt, tax credits, or tax abatements are subject to the Sunshine Law, but such coverage may only extend to such records and meetings that address the expenditure of public funds. Mo.Rev.Stat. § 610.010(4)(f)(b).

Quasi-judicial bodies are subject to the Sunshine Law. *Remington v. City of Boonville*, 701 S.W.2d 804, 806 (Mo.Ct.App. 1985) (holding that city’s board of zoning adjustment was subject to the Sunshine Law); *But see Nasrallah v. Missouri Board of Chiropractic Examiners*, 1996 WL 678640 at *5-6 (Mo.Ct.App. 1996) (when an administrative agency acts in a quasi-judicial capacity, adjudication is closed).

7. Others.

Any record, survey, memorandum or other document or study prepared and presented to a public governmental body by a consultant or other professional service paid for in whole or in part by public funds

is a public record subject to disclosure under the Sunshine Law. This includes records created or maintained by a private contractor under an agreement with or on behalf of a public governmental body. Records prepared for a public governmental body by a consultant shall be retained by the body in the same manner as any other public record. Mo.Rev.Stat. § 610.010(6).

C. What records are and are not subject to the act?

1. What kind of records are covered?

a. The Sunshine Law embraces any record retained by or of any public governmental body, regardless of its nature or source. Mo.Rev.Stat. § 610.010(6).

b. The Public Records Law applies only to state, county and municipal records kept pursuant to statute or ordinance. Mo.Rev.Stat. § 109.180.

c. The common law right of access to public records includes all records kept by public officials in discharging their duties. *Disabled Police Veterans Club v. Long*, 279 S.W.2d 220, 223 (Mo.Ct.App. 1955) (“independently of statute the term public records covers not only papers expressly required to be kept by a public officer but all written materials made by a public officer within his authority where such writings constitute a convenient, appropriate or customary method of discharging the duties of the office.”)

2. What physical form of records are covered?

The Sunshine Law applies to all public records, “whether written or electronically stored.” Mo.Rev.Stat. § 610.010(6). *See also* Mo.Rev.Stat. § 610.026(1)(refers to fees for access to public records maintained on computer facilities, recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations or similar audio or visual items or devices). In addition, the Sunshine Law strongly encourages public governmental bodies to keep records in electronic form, and to make information available in usable electronic formats. Mo.Rev.Stat. § 610.029.1

The Sunshine Law requires that any member of a public governmental body who transmits any message relating to public business concurrently transmit the message either to the member’s public office computer or to the custodian of records in the same format, becoming a public record (subject to the enumerated exceptions). Mo.Rev.Stat. § 610.026.1(1).

The Public Records Law does not expressly restrict public records to a particular physical form, but merely refers to “records, instruments or documents.” Mo.Rev.Stat. § 109.180. Access under the Public Records Law is subject to “reasonable rules and conditions imposed by proper authorities.” *State ex rel. Gray v. Brigham*, 622 S.W.2d 734, 735 (Mo.Ct.App. 1981). Therefore, if access to a public record on a computer disk is determined unreasonable by the proper authority, there may be no right of access under the Public Records Law.

3. Are certain records available for inspection but not copying?

Both the Sunshine Law and the Public Records Law authorize public inspection and copying of public records. Mo.Rev.Stat. § 610.023.2; Mo.Rev.Stat. § 109.190. Inspection and copying of public records is also authorized by common law. *Disabled Police Veterans Club v. Long*, 279 S.W.2d 220, 223 (Mo.Ct.App. 1955).

D. Fee provisions or practices.

The practice of the Director/Reviser of Statutes of selling state statutes on computer tape to the highest bidder, where the bidder subsequently marketed the statutes to the public, was invalidated as constituting an excessive fee for public access to the computerized statutes. *Deaton v. Kidd*, 932 S.W.2d 804 (Mo.Ct.App. 1996).

The Sunshine Law now contains the following fee provisions in Mo.Rev.Stat. § 610.026.1:

- Copying: Not to exceed ten cents per page for a paper copy not larger than nine by fourteen inches, with the hourly fee for duplicating time not to exceed the average hourly rate of pay for clerical staff of the governmental body.

- Electronic Media: The charge for all forms of electronic media and paper copies larger than nine by fourteen inches includes only the cost of the copies and the staff time for making copies and programming, if necessary, and the cost of the disk, tape, or other medium used for the duplication. “Staff time” shall not exceed the average hourly rate of pay for staff of the governmental body. If programming is required beyond the “usual and customary” level to comply with a records request, the fees may include the actual cost of programming. The amount that can be charged for electronic records is not dependent on the number of records requested, but rather cannot exceed the actual cost to the governmental body of providing such records. *R.L. Polk & Co. v. Missouri Dept. of Revenue*, 309 S.W.3d 881 (Mo.Ct.App. 2010).

- Fees for maps, blueprints, or plats that may require special expertise for duplication may include the actual rate of compensation for the trained personnel required.

- Research: May be charged at the actual cost of research time.

- Fee Practices: Based on the scope of the request, the governmental body shall produce the copies using employees that result in the lowest charges for search, research and duplication. A person requesting the records may ask for an estimate of costs before copies are produced.

The Public Records Law authorizes the lawful custodian of the public records copied to charge “a reasonable rate for his services or for the services of a deputy to supervise the work and for the use of the room or place where the work is done.” Mo.Rev.Stat. § 109.190. Because the Public Records Law delegates rulemaking authority regarding fees, the remainder of this section applies to the Sunshine Law only.

1. Levels or limitations on fees.

See above. However, if another statute provides a different fee structure, the other statute is controlling. *Webster County Abstract Co., Inc. v. Atkinson*, 328 S.W.3d 434, 440 (Mo.Ct.App. 2010) (“the pricing scheme in section 610.026.1 does not govern if a different statute relating to fees for obtaining copies of public records provides otherwise.”).

2. Particular fee specifications or provisions.

a. Search.

Research time for fulfilling records requests may be charged at the actual cost of research time, but the research should be done in a way to produce the lowest cost. Mo.Rev.Stat. § 610.026.1(1).

b. Duplication.

Not to exceed ten cents per page for a paper copy not larger than nine by fourteen inches, with the hourly fee for duplicating time not to exceed the average hourly rate of pay for clerical staff of the governmental body. Mo.Rev.Stat. § 610.026.1(1).

c. Other.

The charge for all forms of electronic media and paper copies larger than nine by fourteen inches includes only the cost of the copies and the staff time for making copies and programming, if necessary, and the cost of the disk, tape, or other medium used for the duplication. “Staff time” shall not exceed the average hourly rate of pay for staff of the governmental body. If programming is required beyond the “usual and customary” level to comply with a records request, the fees may include the actual cost of programming. Mo.Rev.Stat. § 610.026.1(2).

3. Provisions for fee waivers.

Records may be furnished at no charge or a reduced charge if the public governmental body determines such waiver or reduction of the

fee is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the public governmental body and is not primarily in the commercial interest of the requester. Mo.Rev.Stat. § 610.026.1(1).

4. Requirements or prohibitions regarding advance payment.

Payment of fees for document search or duplication may be required by a public governmental body prior to the making of copies. Mo.Rev.Stat. § 610.026.2.

5. Have agencies imposed prohibitive fees to discourage requesters?

It has happened, but it violates the Sunshine Law.

E. Who enforces the act?

Any aggrieved person, any Missouri taxpayer or citizen, the Attorney General or prosecuting attorney may seek judicial enforcement of the Sunshine Law. Mo.Rev.Stat. § 610.027.1.

1. Attorney General's role.

The Attorney General takes a role in enforcing the Sunshine Law, including issuing opinions regarding the scope of the Law. The Attorney General is authorized to sue to enforce the Sunshine Law (Mo.Rev.Stat. § 610.027.1), but the office rarely initiates litigation, although it may file a brief as *amicus curiae*.

2. Availability of an ombudsman.

There is no provision in the statute.

3. Commission or agency enforcement.

There is no provision in the statute.

F. Are there sanctions for noncompliance?

The Sunshine Law provides for penalties of up to \$1,000 for a body or member of a body found by a preponderance of the evidence to have violated the Law. Mo.Rev.Stat. § 610.027.3. The fine increases to \$5,000 for a purposeful violation. Mo.Rev.Stat. § 610.027.4 If the court finds a knowing or purposeful violation, the court may order the body or member to pay costs and attorney fees to a successful party. The court shall determine the size of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and previous violations of the Sunshine Law by the defendant.

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

The Sunshine Law expressly states that it is to be liberally construed to promote the policy of open government, and that exceptions are to be strictly construed. Mo.Rev.Stat. § 610.011(1). *See also, e.g., Great Rivers Environmental Law Center v. City of St. Peters*, 290 S.W.3d 732 (Mo.Ct.App. 2009) (exceptions are to be strictly construed); *Tipton v. Barton*, 747 S.W.2d 325, 330 (Mo.Ct.App. 1988) (exceptions set forth in the Sunshine Law are to be narrowly construed); *MacLachlan v. McNary*, 684 S.W.2d 534, 537 (Mo.Ct.App. 1984) (exceptions in the Sunshine Law are to be narrowly construed). The Public Records Law enumerates no exceptions. Rather, disclosure is subject to “reasonable rules and conditions imposed by the proper authorities.” *State ex rel. Gray v. Brigham*, 622 S.W.2d 734, 735 (Mo.Ct.App. 1981). Therefore, this section deals with the Sunshine Law only.

A. Exemptions in the open records statute.

1. Character of exemptions.

a. General or specific?

The exceptions to the rule of disclosure in the Sunshine Law are specifically enumerated. Mo.Rev.Stat. § 610.021.

b. Mandatory or discretionary?

Generally, application of the exceptions enumerated in the Sunshine Law are discretionary. Mo.Rev.Stat. § 610.022(4) (“nothing in

sections 610.010 to 610.028 shall be construed as to require a public governmental body to hold a closed . . . record.”).

c. Patterned after federal Freedom of Information Act?

The exceptions enumerated in the Sunshine Law are not patterned after the federal statute. Moreover, even if a record might fall within an exception enumerated in the Freedom of Information Act (FOIA), it is a public record subject to disclosure under the Sunshine Law if it is subsequently retained by a public governmental body in Missouri. *See Missouri Protection and Advocacy Services v. Allan*, 787 S.W.2d 291, 294 (Mo.Ct.App. 1990) (draft report of Federal Department of Education, provided to and retained by State Department of Elementary and Secondary Education, is a public record subject to disclosure under the Sunshine Law).

2. Discussion of each exemption.

a. Litigation. Mo.Rev.Stat. § 610.021(l).

Scope. The so-called “litigation” exception encompasses more than litigation.

- records relating to legal actions, causes of action, or litigation involving a public governmental body; and
- confidential or privileged communications between a public governmental body or its representatives and its attorneys; and

- legal work product. *See Librach v. Cooper*, 778 S.W.2d 351, 353-354 (Mo.Ct.App. 1989) (held settlement agreement between board of education and superintendent of school district was not a confidential or privileged communication between a public governmental body and its attorneys); but see *Calvert v. Mehlville R-IX Sch. Dist.*, 44 S.W.3d 455 (Mo.Ct.App. 2001) (holding that school board must acknowledge existence of settlement agreement in response to a request, but pursuant to confidentiality clause in the agreement could refuse to disclose its contents); *State ex rel. Moore v. Brewster*, 116 S.W.3d 630 (Mo.Ct.App. 2003) (holding that letter from school board attorney concerning investigation of board members was legal work product and the trial court erred in finding that the board president violated the Sunshine Law by refusing to release a copy of the letter to the board members under investigation).

Mere reference to litigation is not sufficient to trigger this exception. *See Tipton v. Barton*, 747 S.W.2d 325, 330 (Mo.Ct.App. 1988) (litigation exception applies to analytical work product, but not to general descriptions of legal services rendered appearing on city attorneys’ itemized monthly billing statements).

Exception Removed Upon Final Disposition of Litigation. Any minutes, vote or settlement agreement relating to legal actions, causes of action, or litigation involving a public governmental body or any agent or entity representing the public body’s interests or acting as its insured, shall be made public upon final disposition of the matter voted upon, or upon the signing by the parties of the settlement agreement, unless prior to final disposition, the settlement agreement is ordered closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy considerations enumerated in § 610.011. However, the amount of any monies paid by, or on behalf of, the public governmental body shall be disclosed. Mo.Rev.Stat. § 610.021(1), modifying the holding in *Tift v. City of St. Louis*, 936 S.W.2d 113, 119 (Mo.Ct.App. 1996). Also, a public or quasi-public official does not have the same right of privacy as an ordinary citizen, and so cannot rely on such a right to oppose a request to unseal court records relating to the official’s compensation. *Pulitzer Publishing Co. v. Transit Casualty Co.*, 43 S.W.3d 293 (Mo. banc

2001) (in the context of a special deputy receiver appointed to oversee the liquidation of an insurance company).

Eminent Domain/Condemnation. When a public governmental body undertakes to exercise the power of eminent domain, the vote must be made public immediately following the action on the motion to authorize institution of a condemnation action. Mo.Rev.Stat. § 610.021(1).

b. *Real Estate.* Mo.Rev.Stat. § 610.021(2).

Scope. Government records relating to the leasing, purchase or sale of real estate by a public governmental body may be closed. *Id.* Such records, including minutes of closed meetings, may be closed even if no actual lease, purchase or sale of real estate results. See *State ex rel. Birk v. City of Jackson*, 907 S.W.2d 181, 187 (Mo.Ct.App. 1995).

Required Finding. Before a “real estate” record may be closed, the public governmental body must first find that public knowledge of the transaction might adversely affect the legal consideration for that real estate. Mo.Rev.Stat. § 610.021(2); *State ex rel. Birk v. City of Jackson*, *supra*.

Exception Removed Upon Completion of Transaction. Minutes of closed meetings, votes or other public records approving the contract relating to the leasing, purchase or sale of real estate by a public governmental body must be made public upon execution of the lease, purchase or sale of the real estate. See *State ex rel. Birk v. City of Jackson*, 907 S.W.2d 181, 187 (Mo.Ct.App. 1995) (city properly withheld minutes of closed council meetings where agreements to operate city-owned landfill were discussed with independent contractors until the agreements were finally approved); *City of St. Louis v. City of Bridgeton*, 806 S.W.2d 717, 719 (Mo.Ct.App. 1991) (held that the meaning of the term “transaction” in the real estate exception is broad enough to encompass multi-lot bulk real estate acquisition or buyout program by public governmental body, and contracts on individual lots need not be available for public inspection until buyout program is complete and knowledge of purchase prices on individual lots would not adversely affect subsequent contracts); *Tipton v. Barton*, 747 S.W.2d 325, 331 (Mo.Ct.App. 1988) (mere reference in a public record to a real estate transaction is not sufficient to trigger application of the real estate exception; the exception applies only where the actual terms of any real estate transaction or a negotiating position of the public governmental body is reflected in the record); *Spradlin v. City of Fulton*, 982 S.W.2d 255, 259 (Mo. banc 1998) (to trigger the real estate exception 1) information must relate directly to the leasing, purchase, or sale of real estate by a public governmental body, and 2) public knowledge of the transaction might adversely affect the legal considerations thereof).

c. *Employment.* Mo.Rev.Stat. § 610.021(3).

Scope. Governmental records relating to hiring, firing, disciplining or promoting an employee of a governmental body may be closed, but only if “personal information” about the employee is discussed or recorded therein.

Personal Information About the Employee. The above records may be closed only if “personal information” about the employee is discussed or recorded therein. “Personal information” is defined to include information relating to the performance or merit of individual employees. *Id.*

See also, Mo.Rev.Stat. § 610.021(13) (relating to personnel records), discussed below.

When Information May be Made Public. Any vote on a final decision made by a public governmental body, to hire, fire, promote or discipline one of its employees shall be made available to the public within 72 hours of the close of the meeting where such action occurs, provided, however, that the affected employee is entitled to prompt notice of the decision before such decision is made available to the public.

Particular cases related to public employee matters: See *Pulitzer Publishing Co. v. Missouri State Employees’ Retirement System*, 927

S.W.2d 477 (Mo.Ct.App. 1996) (pension payments made to former state employees must be disclosed); *Wolfskill v. Henderson*, 823 S.W.2d 112, 114 (Mo.Ct.App. 1991) (held police department internal investigative reports not subject to disclosure under the Sunshine Law); *Pasikon v. Salem Memorial Hospital District*, 806 S.W.2d 417, 423-424 (Mo. Ct.App. 1991) (board of directors of hospital district could conduct closed meeting to discuss suspension of physician’s hospital staff privileges); *Librach v. Cooper*, 778 S.W.2d 351 (Mo.Ct.App. 1989) (held records reflecting severance pay paid to former superintendent of public school district are public records subject to disclosure under the Sunshine Law); *Tipton v. Barton*, 747 S.W.2d 325, 331 (Mo.Ct.App. 1988) (mere identification of personnel matters within a description of legal services rendered on a city attorney’s itemized monthly billing statement is not sufficient to place the statement within the employment exception); *Hudson v. School District of Kansas City*, 578 S.W.2d 301, 309 (Mo.Ct.App. 1979) (meeting in which school board decided to furlough several hundred probationary teachers and reassign a large number of administrative employees did not fall within the employment exception because the motivation behind the furloughs was financial. The Board was attempting to solve a huge budget deficit and the individual employees affected were not discussed); *Wilson v. McNeal*, 575 S.W.2d 802, 806 (Mo.Ct.App. 1978) (police department report on investigation into death of man in police custody could be closed record under the employment exception because the investigation could have led to disciplining of employees).

d. *State Militia or National Guard.* Mo.Rev.Stat. § 610.021(4).

Records relating to the state militia or National Guard may be closed.

e. *Non-Judicial Mental Health or Physical Health Proceedings.* Mo.Rev. Stat. § 610.021(5).

Records relating to non-judicial mental or physical health proceedings involving identifiable persons, including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment may be closed.

f. *Scholastic Records.* Mo.Rev.Stat. § 610.010(6).

Government records relating to scholastic probation, expulsion or graduation of identifiable individuals, including records of individual test or examination scores, may be closed. Mo.Rev.Stat. § 610.021(6). However, personally identifiable student records maintained by public educational institutions are open for inspection by the parents, guardian or other custodian of a student under the age of 18 years and by the parents, guardian or other custodian and the student if the student is over the age of 18 years.

g. *Testing or Examination Materials.* Mo.Rev.Stat. § 610.021(7).

Testing and examination materials, before the test or examination is given or, if it is to be given again, before so given again, may be closed.

h. *Welfare.* Mo.Rev.Stat. § 610.021(8).

Government records relating to welfare cases of identifiable individuals may be closed.

i. *Public Employee Negotiations.* Mo.Rev.Stat. § 610.021(9).

Government records relating to preparation, including any discussions or work product, on behalf of a public governmental body or its representatives for negotiations with employee groups may be closed. See *State ex rel. Board of Public Utilities v. Crow*, 592 S.W.2d 285 (Mo. Ct.App. 1979) (collective bargaining sessions of city board of public utilities not required to be open to the public).

j. *Computer Programs.* Mo.Rev.Stat. § 610.021(10).

Software codes for electronic data processing and documentation thereof may be closed.

k. *Specifications for Competitive Bidding.* Mo.Rev.Stat. § 610.021(11).

Specifications for competitive bidding, until either the specifications are officially approved by the public governmental body or the specifications are published for bid may be closed. See *Hanten v. School Dist. of Riverview Gardens*, 183 F.3d 799, 810-811 (conclusion that school board members meeting privately did not intend to violate the Sunshine Law was supported by § 611.021(11) of the Sunshine Law, which permitted them to meet in closed session to discuss bid specifications).

l. *Sealed Bids*. Mo.Rev.Stat. § 610.021(12).

Sealed bids and related documents, until the earlier of either when the bids are opened, or all bids are accepted or all bids are rejected, may be closed.

m. *Personnel Records*. Mo.Rev.Stat. § 610.021(13).

Individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment may be closed, including the names of private sources contributing to the salary of a chancellor or president at all public colleges and universities in Missouri, together with the amount of money contributed. See *Nasrallah v. Missouri State Board of Chiropractic Examiners*, 1996 WL 678640 (Mo.Ct.App. 1996) (chiropractor's disciplinary hearing is an open meeting, but adjudicative stage of the proceedings may be closed); *Pulitzer Publishing Co. v. Missouri State Employees' Retirement System*, 927 S.W.2d 477, 481-83 (Mo.Ct.App. 1996) (pension payments made to former state employees are encompassed in "salaries" and must be disclosed); *Librach v. Cooper*, 778 S.W.2d 351 (Mo.Ct.App. 1989) (records reflecting severance pay paid to former superintendent of public school district are public records subject to disclosure under the Sunshine Law); *Wolfskill v. Henderson*, 823 S.W.2d 112, 114 (Mo.Ct.App. 1991) (police department internal investigative reports not subject to disclosure under the Sunshine Law); *Wilson v. McNeal*, 575 SW.2d 802, 806 (Mo.Ct.App. 1978) (record of police department of investigation into death of man in police custody could be a closed record); *Christiansen v. Missouri State Board of Accountancy*, 764 S.W.2d 943 (Mo.Ct.App. 1988) (CPA was entitled to access to records of the State Board of Accountancy relating to disciplinary proceedings against him). This exception does not apply to the names, positions, salaries and lengths of services of officers and employees of public agencies once they are employed as such. *Id.* There is likely to be some overlap between this section and the employment exception in Mo.Rev.Stat. § 610.021(3).

n. *Records Protected From Disclosure by Law*. Mo.Rev.Stat. § 610.021(14).

See more detailed discussion in section II.B., below.

o. *Scientific or Technological Innovations*. Mo.Rev.Stat. § 610.021(15).

Records relating to scientific and technological innovations in which the owner has a proprietary interest may be closed.

p. *Abuse Hotlines*. Mo.Rev.Stat. § 610.021(16).

Records related to municipal hotlines established for the reporting of abuse and wrongdoing may be closed.

q. *Auditor Records*. Mo.Rev.Stat. § 610.021(17).

Confidential or privileged communications between a public governmental body and its auditor, including all auditor work product, may be closed. Final audit reports, however, are considered open records.

r. *Anti-terrorism Records*. Mo.Rev.Stat. § 610.021(18); Mo.Rev.Stat. § 610.021(19).

Operational guidelines and policies developed, adopted or maintained by any public agency responsible for law enforcement, public safety, first response, or public health for use in responding to "any critical incident which is or appears to be terrorist in nature and has the potential to endanger individual public safety or health. This

exception does not close information relating to contracts and expenditures made in implementing these guidelines and policies. An agency seeking to use this exception must state in writing that disclosure would impair its ability to protect health or safety of persons and must further state in writing that the public interest in nondisclosure outweighs the public interest in disclosure. This provision sunsets on December 31, 2008." Mo.Rev.Stat. § 610.021(18).

Records relating to existing or proposed security systems and structural plans or real property owned or released by a public governmental body may be a closed record, however, records related to the procurement of security systems purchased with public funds shall be open. This provision also sunsets on December 31, 2008. Mo.Rev.Stat. § 610.021(19).

s. *Computer System Information*. Mo.Rev.Stat. § 610.021(20).

Records identifying the configuration of components or the operation of a computer, computer system, computer or telecommunications network of a public governmental body that would allow unauthorized access to or disruption of same may be closed; however, procurement information, including moneys paid, shall be open, and this provision cannot be used to limit or deny access to public records in a file or database.

t. *Credit Card Numbers*. Mo.Rev.Stat. § 610.021(21).

Credit card and PIN numbers, access or authorization codes that are used to protect the security of electronic transactions between a public governmental body and a person or entity doing business with that body. This section does not include credit card usage information for a card held by a public governmental body.

u. *Social Security Numbers*. Mo.Rev.Stat. § 610.035.

No state entity shall disclose any Social Security number unless 1) such disclosure is permitted by federal law, federal regulation or state law; 2) unless such disclosure is authorized by the holder of the Social Security number; and 3) unless such disclosure is for use in connection with any civil, criminal, administrative or arbitration proceeding in any federal, state, or local court or agency or arbitration proceeding in any federal, state, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation and the execution of enforcement of judgments and orders, or pursuant to an order of federal, state, or local court.

B. Other statutory exclusions.

"Records which are protected from disclosure by law" may be closed. Mo.Rev.Stat. § 610.021(14). See *Oregon County R-IV School District v. Le Mon*, 739 SW.2d 553, 557 (Mo.Ct.App. 1987) (language in the Sunshine Law "except as otherwise provided by law" means except as otherwise provided by statute); *Pulitzer Publishing Company v. Missouri State Employees' Retirement System*, 927 S.W.2d 477, 480 (Mo.Ct.App. 1996) (a regulation promulgated pursuant to an agency's general rule-making authority is not within the "except as otherwise provided by law" exception to the Sunshine Law); *Missouri Protection and Advocacy Services v. Allan*, 787 SW.2d 291, 292 (Mo.Ct.App. 1990) (a record exempt from the federal Freedom of Information Act ("FOIA"), 5 U.S. § 552 et seq., is not exempt from the Missouri Sunshine Law unless a specific state statute expressly so provides). Missouri statutes regulate access to the types of records listed below. We identified statutes that fall within the "catch-all" exception. While an attempt was made to be comprehensive, there may be other statutes governing access to particular records not addressed here.

1. Agricultural Records

Mo.Rev.Stat. § 196.560: *State Dairy Board*. The Missouri Dairy Law requires that persons who purchase and sell milk for processing and manufacturing must maintain records containing certain information for at least one year. Mo.Rev.Stat. § 196.560. Those records must be made available to the State Milk Board. *Id.* However, individual items or totals

of an individual person or plant are to remain confidential. *Id.*

Mo.Rev.Stat. § 276.551: *Department of Agriculture Records Relating to Grain Dealers*. Records of the Missouri Department of Agriculture relating to grain dealers containing information obtained pursuant to Mo.Rev.Stat. §§ 276.401 to .582, are confidential. Mo.Rev.Stat. § 276.551.2. Aggregate information or data contained in applications, reports or inspections may be released only if it does not identify the grain dealer to which the information applies. *Id.*

Mo.Rev.Stat. § 277.120: *Livestock Records of State Veterinarian*. The State Veterinarian is authorized to inspect the records of any livestock sales or market licensee to determine the origin and destination of any livestock, or to determine if requirements of the Missouri Livestock Marketing Law have been violated. Mo.Rev.Stat. § 277.120. Any documents acquired by the State Veterinarian that reveal the financial condition of a licensee are confidential. *Id.*

Mo.Rev.Stat. § 411.180: *Grain Warehouse Examinations, Audits, or Inspections*. The Director of Agriculture is authorized by Mo.Rev.Stat. § 411.180 to examine or inspect grain warehouses and grain warehouse businesses as they relate to public storage. The information obtained by the Missouri Department of Agriculture in the course of such examinations, audits or inspections is confidential. *Id.*

2. Children and Youth Records

Mo.Rev.Stat. § 191.737: *Referrals of Children Who May Have Been Exposed to Controlled Substances or Alcohol*. Mo.Rev.Stat. § 191.737 authorizes physicians or other health care providers to refer children who may have been exposed to certain controlled substances or alcohol to the Department of Health, and provides that records of such referrals are to be confidential.

Mo.Rev.Stat. § 210.150: *Reports of Child Abuse or Neglect*. Reports of child abuse or neglect received by the Missouri Division of Family Services shall not be released to any individual or institution, except appropriate law enforcement officials, but shall be treated as confidential pursuant to Mo.Rev.Stat. § 210.150.2. Information relating to child abuse or neglect may be disseminated to certain classes of persons. Such information may be disclosed to any person engaged in a bona fide research purpose, with the permission of the director, provided that no information identifying the subjects of the reports and the reporters shall be made available to the researcher. Mo.Rev.Stat. § 210.150.5. In addition, such information may be disclosed to any person who inquires about a child abuse or neglect report involving a specific day care home, day care center, child placing agency, residential care facility, private and public elementary schools, juvenile court or other state agency. Mo.Rev.Stat. § 210.150.2(a). The information available to these persons is limited to the nature and disposition of any substantial report and does not include any identifying information pertaining to any person mentioned in the report. *Id.* A court of appeals held that the Missouri Department of Social Services (“DSS”) is not a “law enforcement agency,” and, therefore, the release of DSS reports and records is not governed by Mo.Rev.Stat. § 610.100, but rather by Mo.Rev.Stat. § 210.150. *Scroggins v. Missouri Department of Social Services*, 277 S.W.3d 498, 502-503 (Mo.Ct.App. 2007).

Mo.Rev.Stat. § 210.152: *Administrative Review of Finding of Abuse or Neglect*. Any person named in an investigation of suspected child abuse or neglect may seek administrative review of such a finding. Mo.Rev.Stat. § 210.152. Such a review hearing is to be closed to the public. *Id.*

Mo.Rev.Stat. § 211.321: *Juvenile Court Records*. Records of Juvenile Court proceedings are generally closed pursuant to Mo.Rev.Stat. § 211.321. Such records may only be opened by order of the Juvenile Court, to persons having a “legitimate interest” in the records. *Id.* Information and data may be released to persons or organizations “authorized by law” to compile statistics relating to juveniles. Mo.Rev.Stat. § 211.321.4. However, the Juvenile Court is required to adopt procedures to protect the confidentiality of the identities of children.

Id. In addition, certain general information about the informal adjustment or formal adjudication of a child’s case may be revealed to the family of the victim. Mo.Rev.Stat. § 211.321.6.

Mo.Rev.Stat. § 211.321: *Juvenile Records Pertaining to Offense Which Would be a Felony if Committed by an Adult*. If a child of at least twelve years of age is charged with an offense that would be Class A felony if committed by an adult, or with capital murder, first degree murder or second degree murder, the child may be certified for trial as an adult. Mo.Rev.Stat. § 211.321.1. The statute is unclear as to whether the certification hearing itself is open to the public, and the practice varies among jurisdictions within the State. If a child is certified for trial as an adult, certain records that otherwise would be closed become open to the same extent as criminal records of an adult. Mo.Rev.Stat. § 211.321.1. Even if a child charged with a felony is not certified for trial as an adult, if he or she is adjudicated “delinquent” for an offense that would be a felony if committed by an adult, the records of the dispositional hearing and related proceedings become open to the public. Mo.Rev.Stat. § 211.321. However, the social summaries, investigations, and status reports submitted to the court or any treating agency are to remain closed. *Id.* In addition, under Mo.Rev.Stat. § 211.171.6, “the hearing” shall be open to the public in cases in which the juvenile is charged with an offense which, if committed by an adult, would be considered a class A or B felony; or which would be a class C felony if the juvenile has previously been adjudicated for committing two unrelated acts that would be class A, B or C felonies. *See also State ex rel. St. Louis Post-Dispatch v. Garvey*, 2006 Mo. App. Lexis 685 (this section applies to the adjudicatory hearing).

Mo.Rev.Stat. § 219.061: *Missouri Division of Youth Services Records*. Records relating to any child committed to the Division of Youth Services of the Missouri Department of Social Services are closed, except to parents or guardians, or if parents or guardians are out of the state, to the nearest immediate relative of the child. Mo.Rev.Stat. § 219.061.

3. Corporate and Financial Records

Mo.Rev.Stat. § 30.600: *Business and Financial Records Submitted to State Treasurer*. Any records or documents submitted to the Missouri State Treasurer relating to financial investments in a business, sales figures or projections or other business results or business plan information, the disclosure of which may have a negative impact on the competitiveness of the business, shall be deemed a closed record.

Mo.Rev.Stat. § 32.057.1: *Tax Returns and Department of Revenue Records*. Tax returns and Department of Revenue reports, containing information received by the Department of Revenue in connection with the administration of tax laws are made confidential by Mo.Rev.Stat. § 32.057.1, and can only be disclosed under certain circumstances enumerated in § 32.057.2. (For example, disclosure is not prohibited of information regarding the claiming of a state tax credit by a member of the General Assembly or any state-wide elected official.)

Mo.Rev.Stat. § 348.181: *Information Submitted to the Missouri Agricultural and the Small Business Development Authority*. Records and documents submitted by program applicants and lenders to the Missouri Agricultural and Small Business Development Authority relating to financial investments in a business or sales projections or processes or other business plan information which if released or otherwise made public may endanger the competitiveness of a business, or records or documents submitted to the authority related to financial assistance that is awarded by the Authority is a closed record, and may be discussed in a closed meeting. However, the amount and recipient of any loan or grant from a program administered by the Authority is subject to disclosure under the Sunshine Law.

Mo.Rev.Stat. § 351.665: *Information Obtained by the Secretary of State or Supervisor of Corporation Registration in Examining Corporate Books and Records*. Generally, confidential corporate information obtained by the Secretary of State or the Supervisor of Corporation Registration is obtained during the course of examining the books and records of

any corporation is to be kept confidential. Mo.Rev.Stat. § 351.665. Confidential information includes information relating to private accounts, affairs and transactions, and financial information of assets and liabilities. *Id.*

Mo.Rev.Stat. § 347.183 and Mo.Rev.Stat. § 359.681: *Information Obtained by the Secretary of State in Examining the Books and Records of Limited Liability Companies and Limited Partnerships.* Generally, the Missouri Secretary of State must keep confidential all facts obtained in the examination of the books and records of any limited liability company, or through the voluntary sworn statement of any manager, member, agent, or employee of any limited liability company. Mo.Rev.Stat. § 347.183. The Missouri Secretary of State may disclose such information “insofar as official duty may require.” *Id.* All similar information obtained by the Missouri Secretary of State when examining the books of limited partnership is to be kept confidential, and may only be disclosed “insofar as official duty may require.” Mo.Rev.Stat. § 359.681.

Mo.Rev.Stat. § 361.080: *Information Obtained From Financial Institutions by the Director of Finance.* Information obtained from financial institutions (banks, trust companies, small loan businesses) by the Missouri Director of Finance in the course of examinations is generally deemed confidential.

Mo.Rev.Stat. § 369.099: *Account Holders, Borrowers, and Stockholders of Savings & Loans.* The books and records of Savings and Loan Associations pertaining to accounts and loans of account holders, borrowers and stockholders, are to be held confidential by the Director of the Division of Finance, examiners and other State representatives pursuant to Mo.Rev.Stat. § 369.099.

Mo.Rev.Stat. § 369.294: *Information Obtained From Savings & Loans by the Director of Finance.* Information obtained from savings and loan associations obtained by examiners of the Division of Finance and Examiners is generally confidential.

Mo.Rev.Stat. § 409.830: *Information Retained by Commissioner of Securities.* Generally, all information retained by the Missouri Commissioner of Securities is public information and must be available for examination by the public. Mo.Rev.Stat. § 409.830. However, information obtained in the course of private investigations by the Commissioner of Securities may be closed to the public. *Id.*

Mo.Rev.Stat. § 620.014: *Records Submitted to State or Regional Agencies Relating to Financial Investments in a Business, Sales Projections or Other Business Plan Information, or Relating to Tax Credits.* Records submitted to the Missouri Department of Economic Development, the Missouri Economic Development, Export and Infrastructure Board or to a Regional Planning Commission relating to financial investments in a business, sales projections or other business plan information, are closed under Mo.Rev.Stat. § 620.014. Records relating to tax credits are also closed, except for the identities of the businesses receiving tax credits and the amount of tax credits awarded. *Id.* See *Christiansen v. State Board of Accountancy*, 764 S.W.2d 943, 951 (Mo. Ct.App. 1988) (held Sunshine Law does not apply to CPA’s request for records of professional licensing bond relating to disciplinary action against him).

4. Department of Health Records

Mo.Rev.Stat. § 192.450: *Data Relating to Sources of Radiation.* Mo.Rev.Stat. § 192.450 authorizes the Department of Health to investigate possible sources of radiation. Data obtained by the Department as a result of such investigations is deemed confidential. Mo.Rev.Stat. § 192.505 requires that the Department of Health maintain a statistical database for analyzing information relating to sources of radiation, and a list of persons authorized to use, possess, store, treat or transfer sources of radiation. Generally, that information is to be made available to the public.

Mo.Rev.Stat. § 192.655: *Data Relating to Cancer.* The Missouri

Department of Health is required to maintain a cancer information reporting system for the purpose of conducting epidemiological surveys of cancer and related diseases. The identity of the patient, physician and hospital involved in reports made is deemed confidential by Mo.Rev.Stat. § 192.655.

Mo.Rev.Stat. §§ 192.739 and 199.033: *Reports of Head and Spinal Cord Injuries.* The Missouri Department of Health maintains an information registry and reporting system to collect data pertaining to head and spinal cord injuries in the State. Mo.Rev.Stat. § 192.739 provides that such reports are confidential, and may only be made available to certain enumerated persons, including those engaged in a “bona fide research project.”

Records of the Division of injury prevention, head injury rehabilitation and local health services of the Department of Health, or patient records of rehabilitation facilities funded by the Department, are confidential pursuant to Mo.Rev.Stat. § 199.033. Such records may only be released to certain agencies or persons enumerated in the statute. *Id.*

Mo.Rev.Stat. § 195.042: *Registration of Manufacturers, Distributors, or Dispensers of Controlled Substances.* All complaints, investigatory reports, and information pending to any applicant, registrant, or individual regarding the registration by the Missouri Department of Health to manufacture, distribute, or dispense, or conduct research with controlled substances is confidential.

Mo.Rev.Stat. § 197.260: *Reports on Individual Hospices.* The Missouri Department of Health is required to prepare reports on individual hospices and whether they comply with certain statutory or regulatory requirements. Interim reports identifying deficiencies are confidential. Mo.Rev.Stat. § 197.260. Final reports of inspections or surveys showing the standards and whether or not they were met, may be released to the public. *Id.* All other information is to remain confidential. *Id.*

Mo.Rev.Stat. § 197.477: *Inspections of Trauma Centers, Hospitals, Ambulatory Surgical Centers, and Home Health Agencies.* The Missouri Department of Health inspects and evaluates health facilities and agencies, including trauma centers (§§ 190.235 to .249); hospitals (§§ 197.010 to .120); ambulatory surgical centers (§§ 197.200 to .240); and home health agencies (§§ 197.400 to .475). The Department is authorized by Mo.Rev.Stat. § 197.477 to disclose reports of the inspections showing the standards by which the inspections were conducted and whether those standards were met, and if not met, the manner in which the standards were not met and how the facility proposes to correct any deficiencies. All other information relating to such inspections or evaluations is deemed confidential.

Mo.Rev.Stat. § 210.194: *Records of Missouri Child Fatality Review Panels.* The prosecuting attorney or the circuit attorney shall impanel a child fatality review panel to investigate deaths of children under 18 years of age. Mo.Rev.Stat. § 210.192. The Director of the Missouri Department of Social Services, in consultation with the Director of the Missouri Department of Health, promulgates rules, guidelines, and protocols for the child fatality review panel. *Id.* All meetings conducted by and all reports and records made and maintained by the Missouri Department of Social Services and the Missouri Department of Health in conjunction with child fatality review panels are confidential. Mo.Rev.Stat. § 210.194.

5. Department of Insurance Records

Mo.Rev.Stat. § 374.070: *Work Product and Confidential Communications.* Mo.Rev.Stat. 374.070 generally provides that records of the Missouri Department of Insurance and of the Director are to be open to the public. However, the statute also provides that “work product” of the Director or employees of the Department of Insurance, including work papers of examinations or investigations of insurance companies, agents, brokers and others are not “public records” until the matter to which the work papers are related becomes final. *Id.* In addition, the statute provides that “confidential

communications” to the Director are not “public records.” *Id.* The statute itself does not define what constitutes “confidential communications” to the Director. *Id.* However, certain regulations promulgated by the Missouri Department of Insurance purport to bestow unlimited discretion on the Director to determine what is a “confidential communication.” See 20 C.S.R. 10-2.400. See *Golden Rule Insurance Company v. Crist*, 766 S.W.2d 637, 639 (Mo. banc 1989) (Director of Division of Insurance’s decision to make certain market conduct reports public not an abuse of discretion). In addition, a Missouri Department of Insurance regulation provides that the Department will notify any person or entity that has submitted information to the Department or the Director stamped “confidential” when there is a request for public access to that information and that such information may be withdrawn. See 20 C.S.R. 10-2.400.

Mo.Rev.Stat. § 374.205: *Missouri Department of Insurance Examinations*. All working papers, recorded information, and documents produced by, obtained by, or disclosed to the Department of Insurance in the course of examination of insurance companies are confidential.

Mo.Rev.Stat. §§ 374.405 and 374.455: *Zip Code Data Base Relating to Homeowners and Automobile Insurance*. Mo.Rev.Stat. §§ 374.405 and 374.455 require that insurance companies that issue homeowners or automobile insurance policies in Missouri submit certain premium and loss data to the Missouri Department of Insurance annually. This data constitutes a “public record.” *But see American Family Mutual Ins. Co. v. Legal Aid of Western Missouri*, 169 S.W.3d 905 (Mo.Ct.App. 2005) (zip code level written premium data submitted by insurance companies to the Department of Insurance is a trade secret and the courts are empowered to enjoin its disclosure under Mo.Rev.Stat. § 417.455, which gives courts the power to protect misappropriation of trade secrets).

Mo.Rev.Stat. § 375.022: *Insurance Agents*. Information relating to the appointment of agents of insurance agencies is confidential. Mo.Rev.Stat. § 375.022 (1994).

Mo.Rev.Stat. § 375.1160: *Administrative Suspension of Insurance Companies*. The Department of Insurance may place an insurance company under administrative supervision for any reason set out in the statute. All proceedings, hearings, notices, orders, correspondence, reports, records, or information in possession of the Missouri Department of Insurance relating to any insurer are confidential except in the few situations enumerated in the statute. *Id.*

Mo.Rev.Stat. § 375.1267: *Risk Based Capital (RBC) Reports*. Risk Based Capital (RBC) Reports are comprehensive financial plans that insurance companies are required to submit annually to the National Association of Insurance Commissioners (NAIC) and Missouri Department of Insurance annually (on or before March 15). RBC Reports are confidential pursuant to Mo.Rev.Stat. § 375.1267.

Mo.Rev.Stat. § 376.1082: *Trade Secrets Contained in Life, Health, and Accident Insurance Companies’ Books and Records*. The Director of Insurance has access for purposes of examination to the books and records of insurance companies that issue life, health, or accident insurance in Missouri. Any trade secrets reflected in those books and records, including the identity and addresses of policy holders and certificate holders, are confidential.

Mo.Rev.Stat. § 382.230: *Insurance Holding Company Records*. Information obtained by the Missouri Department of Insurance from insurance holding companies in the course of investigations or examinations by the Department is confidential pursuant to Mo.Rev.Stat. § 382.230, and cannot be released to the public without the consent of the insurance holding company.

Mo.Rev.Stat. § 383.062: *Reports of Real Estate Malpractice*. Insurance companies that issue policies for real estate malpractice insurance in Missouri must submit an annual report to the Missouri Department of Insurance containing information on all claims for real estate malprac-

tice made against their insureds. Those annual reports are confidential pursuant to Mo.Rev.Stat. § 383.062, and are not discoverable in any proceeding pursuant to Mo.Rev.Stat. § 383.069.

Mo.Rev.Stat. § 383.077: *Reports of Attorney or Legal Malpractice*. Insurance companies that issue policies for attorney malpractice insurance in Missouri must submit an annual report to the Missouri Department of Insurance containing information on all claims for malpractice made against their insureds. Those annual reports are confidential pursuant to Mo.Rev.Stat. § 383.077, and are not discoverable in any proceeding pursuant to Mo.Rev.Stat. § 383.083.

Mo.Rev.Stat. § 383.077: *Reports of Medical Malpractice*. Insurance companies that issue policies for health care provider malpractice insurance in Missouri must submit an annual report to the Missouri Department of Insurance containing information on all claims for malpractice made against their insureds. Mo.Rev.Stat. § 383.105. Those annual reports are confidential pursuant to Mo.Rev.Stat. § 383.115.

6. Department of Social Services Records

Mo.Rev.Stat. § 189.085: *Aid to Local Government Health Facilities*. Department of Social Services records and information relating to aid to local government health facilities are to be disclosed only for purposes directly connected with the administration of the health services program. Mo.Rev.Stat. § 189.085. In particular, records concerning applicants and recipients of health services are deemed confidential.

Mo.Rev.Stat. § 210.194: *Records of Missouri Child Fatality Review Panels*. The prosecuting attorney or the circuit attorney shall impanel a child fatality review panel to investigate deaths of children under 18 years of age. Mo.Rev.Stat. § 210.192. The Director of the Missouri Department of Social Services, in consultation with the Director of the Missouri Department of Health, promulgates rules, guidelines, and protocols for the child fatality review panel. *Id.* All meetings conducted by and all reports and records made and maintained by the Missouri Department of Social Services and the Missouri Department of Health in conjunction with child fatality review panels are confidential. Mo.Rev.Stat. § 210.194.

Mo.Rev.Stat. § 660.263: *Protective Services for Adults*. Reports of allegations or suspicions of adult abuse or that an adult is suffering or is likely to suffer serious physical harm, and related investigation records, are closed pursuant to Mo.Rev.Stat. § 660.263. That information may only be revealed to persons or agencies identified in the statute.

Mo.Rev.Stat. § 660.300: *Reports of Abuse or Neglect of Persons Receiving In-Home Services*. Missouri Department of Social Services records relating to reports of abuse or neglect of persons receiving in-home services are confidential pursuant to Mo.Rev.Stat. § 660.300. *See also* Mo.Rev.Stat. § 660.320.

Mo.Rev.Stat. § 660.305: *Reports of Misappropriation of Property Belonging to Persons Receiving In-Home Services*. Missouri Department of Social Services records relating to reports of misappropriation of property belonging to persons receiving in-home services are confidential pursuant to Mo.Rev.Stat. § 660.305. *See also* Mo.Rev.Stat. § 660.320.

7. Environment and Energy Records

Mo.Rev.Stat. § 256.615.3: *Department of Natural Resources Records Identifying an Oil or Gas Test Hole or Monitoring Well*. Any information obtained by the Missouri Department of Natural Resources that identifies an oil or gas test hole or monitoring well is to remain confidential for a period of at least ten years pursuant to Mo.Rev.Stat. § 256.615.3.

Mo.Rev.Stat. § 260.430: *Hazardous Waste Management Commission*. Information obtained by the Missouri Hazardous Waste Commission relating to disposition of hazardous wastes is generally open to the public. Mo.Rev.Stat. § 260.430. However, if the Director of the Mis-

souri Department of Natural Resources determines that such information constitutes trade secrets or is otherwise entitled to confidential treatment, the information or records may be closed to the public.

Mo.Rev.Stat. § 260.550: *Cleanup of Abandoned or Uncontrolled Sites Containing Hazardous Substances*. Generally, records of the Missouri Department of Natural Resources Records pertaining to the cleanup of abandoned or uncontrolled sites containing hazardous substances are to be open to the public pursuant to Mo.Rev.Stat. § 260.550. However, the statute authorizes the closure of such records upon request, if the records contain trade secrets or other information “entitled to confidential treatment.” *Id.*

Mo.Rev.Stat. § 319.117: *Underground Storage Tanks*. The Missouri Department of Natural Resources requires that any owner or operator of an underground storage tank furnish the Department with information relating to the tanks. Generally, records containing that information are to be made available to the public. *Id.* However, if a person demonstrates to the Department that public disclosure of such records would divulge commercial or financial information entitled to protection under state law, the Department will deem the records confidential. *Id.*

Mo.Rev.Stat. § 414.530.3: *Missouri Propane Education and Research Council*. Mo.Rev.Stat. § 414.530 authorizes the Director of the Division of Energy of the Missouri Department of Natural Resources to conduct a referendum to elect members of the Missouri Propane Education and Research Council. Producers and marketers of propane are to elect the members of the Council. *Id.* Their votes are weighted in accordance with the amount of propane produced or marketed. *Id.* Reports and documentation of the referendum process, and information provided by industry members relating to propane produced and marketed, are confidential. *Id.*

Mo.Rev.Stat. § 444.820: *Surface Coal Permit Applications*. Information provided to the Land Reclamation Commission with an application for surface coal mining which pertains to the analysis of the chemical properties of the coal (excepting information regarding mineral elemental content which is potentially toxic in the environment) is confidential.

Mo.Rev.Stat. § 444.825.2: *Surface Coal Mine Reclamation Plans*. Any information required to be submitted in reclamation plans not already on public file is to be held in confidence by the Land Reclamation Commission.

Mo.Rev.Stat. § 444.845.2: *Coal Exploration Permits*. Information submitted to the Land Reclamation Commission in connection with permits for coal exploration may be withheld from the public if it contains trade secrets or privileged commercial or financial information.

Mo.Rev.Stat. § 640.155: *Energy Information Reported to Department of Natural Resources*. Energy information voluntarily reported or conveyed to the Missouri Department of Natural Resources is deemed confidential for a specific period of time determined by mutual consent of the Department and the person or entity providing the information pursuant to Mo.Rev.Stat. § 640.155.

Mo.Rev.Stat. § 643.040: *Secret Processes or Methods of Manufacture Revealed to the Air Conservation Commission*. Any information acquired by the Air Conservation Commission relating to secret processes or methods of manufacture is confidential pursuant to Mo.Rev.Stat. § 643.040.

Mo.Rev.Stat. § 643.075(7)(2): *Information Submitted to the Air Conservation Commission*. The Missouri Air Conservation Commission may exempt any person from the payment of hourly fees incurred for a construction application upon an appeal filed by such person stating that the fee will create an unreasonable economic hardship on such person. The Commission may conduct a closed meeting and have closed records for the purpose of gathering information from the person filing the appeal of exemption.

8. Judicial Records

Mo.Rev.Stat. § 211.321: *Juvenile Court Records*. Records of Juvenile Court proceedings are generally closed pursuant to Mo.Rev.Stat. § 211.321. Such records may only be opened by order of the Juvenile Court, to persons having a “legitimate interest” in the records. *Id.* Information and data may be released to persons or organizations “authorized by law” to compile statistics relating to juveniles. Mo.Rev.Stat. § 211.321.4. However, the Juvenile Court is required to adopt procedures to protect the confidentiality of the identities of children. *Id.* In addition, certain general information about the informal adjustment or formal adjudication of a child’s case may be revealed to the family of the victim. Mo.Rev. Stat. § 211.321.6.

Juvenile Records Pertaining to Offense Which Would be a Felony if Committed by an Adult. If a child of at least twelve years of age is charged with an offense that would be Class A felony if committed by an adult, or with capital murder, first degree murder or second degree murder, the child may be certified for trial as an adult. Mo.Rev.Stat. § 211.321.1. The statute is unclear whether the certification hearing itself is open to the public, and the practice varies among jurisdictions within the State. If a child is certified for trial as an adult, certain records that otherwise would be closed become open to the same extent as criminal records of an adult. Mo.Rev.Stat. § 211.321.1. Even if a child charged with a felony is not certified for trial as an adult, if he or she is adjudicated “delinquent” for an offense that would be a felony if committed by an adult, the records of the dispositional hearing and related proceedings become open to the public. Mo.Rev.Stat. § 211.321. However, the social summaries, investigations, and status reports submitted to the court or any treating agency are to remain closed. *Id.* In addition, under Mo.Rev.Stat. § 211.171.6, “the hearing” shall be open to the public in cases in which the juvenile is charged with an offense which, if committed by an adult, would be considered a class A or B felony; or which would be a class C felony if the juvenile has previously been adjudicated for committing two unrelated acts that would be class A, B or C felonies. *See also State ex rel. St. Louis Post-Dispatch v. Garvey*, 2006 Mo. App. Lexis 685 (this section applies to the adjudicatory hearing).

Mo.Rev.Stat. § 453.121: *Adoption Records*. Adoption records are generally closed pursuant to Mo.Rev.Stat. § 453.121.

Mo.Rev.Stat. § 487.005: *Substance Abuse Treatment Information Provided to Drug Courts*. Circuit Courts in Missouri may establish drug courts to provide an alternative for the judicial system to dispose of cases which stem from drug use. Mo.Rev.Stat. § 478.061. All records provided to a drug courts by any state or local government agency relevant to the treatment of any program participant are confidential.

Mo.Rev.Stat. § 487.070: *Family Court Proceedings*. Family court proceedings may be closed to the public as directed by a family court judge pursuant to Mo.Rev.Stat. § 487.070.

Mo.Rev.Stat. §§ 552.020.6 and 552.030: *Reports of Court-Ordered Psychiatric Examinations of Criminal Defendants*. Reports of court-ordered psychiatric examinations of persons accused of a crime are closed to the public pursuant to Mo.Rev.Stat. §§ 552.020.6 and 552.030.

Mo.Rev.Stat. § 595.037: *Claims by Crime Victims for Compensation*. Victims of crimes may seek compensation from the Division of Workers Compensation of the Department of Public Safety. Mo.Rev.Stat. §§ 595.010-.070. Such claims are generally open to the public pursuant to Mo.Rev.Stat. § 595.037. Such claims may be closed to the public if the alleged assailant has not been apprehended or brought to trial, if the offense perpetrated against the victim is rape, sodomy or sexual abuse, or if the victim is a minor. *Id.*

Mo.Rev.Stat. § 600.091: *State Public Defenders’ Records*. Files maintained by the State Public Defenders relating to the handling of any criminal cases are confidential pursuant to Mo.Rev.Stat. § 600.091.

Mo.Rev.Stat. § 610.105: *Criminal Records Relating to Charges That Are Nolle Prossed or Dismissed, or to Persons Who Are Found Not Guilty or Receive a Suspended Imposition of Sentence (“SIS”).* If criminal charges are nolle prossed or dismissed, or if the person charged is found not guilty or receives a suspended imposition of sentence (“SIS”), all records pertaining to the criminal proceedings are deemed closed records pursuant to Mo.Rev.Stat. § 610.105 “when such case is finally terminated.” See also *State ex rel. Pulitzer Missouri Newspapers, Inc. v. Seay*, 330 S.W.3d 823, 827 (Mo.Ct.App. 2011) (if imposition of sentence is suspended and probation is ordered, the case is not terminated until successful completion of probation).

9. Law Enforcement Records

Mo.Rev.Stat. § 210.004: *Law Enforcement Reports of Custody of Children.* All law enforcement agencies shall maintain a record of the date and time a child less than 17 years of age is taken into custody for any reason and the date and time that child is released from custody. These records are confidential.

Mo.Rev.Stat. § 217.075: *Missouri Department of Corrections Reports.* Records pertaining to individual personal medical histories and internal administrative reports or documents relating to institutional security are closed records. Reports of abuse of inmates by Department of Corrections employees, and of related investigations, are closed pursuant to Mo.Rev.Stat. § 217.410.

Mo.Rev.Stat. § 217.670: *Probation and Parole Board Records.* Any meeting, record or vote, of proceedings involving probation, parole or pardon may be a closed meeting, closed record or closed vote.

Mo.Rev.Stat. § 252.225: *Investigations of Violations of Missouri Wildlife and Forestry Law.* The Missouri Department of Conservation has a hotline for reports of violations of the Missouri Wildlife and Forestry Law, Mo.Rev.Stat. § 252.010 et seq. Such reports and records of related investigations are confidential under Mo.Rev.Stat. § 252.225, and may only be released to certain enumerated persons, including persons engaged in a “bona fide research purpose” with the permission of the Director of the Department. *Id.*

Mo.Rev.Stat. § 300.125: *Accident Reports.* All written reports made by persons involved in accidents or by garage mechanics are for the confidential use of the police department or other governmental agencies having use for the records for accident prevention purposes. However, such accident reports may be made available to members of the public by the police department or other governmental agency where the identity of a person involved in an accident is not otherwise known or such person denies his presence at such action. *Id.* But see Op. Att’y Gen. No. 102-91 (April 8, 1991) (“investigative records of law enforcement agencies come within the definition of public records,” and as such must be disclosed to the public, unless closure is otherwise required).

Mo.Rev.Stat. § 320.085: *Fire Insurance Company Records Obtained to Investigate Arson.* Fire insurance companies are required to produce records upon request to the State Fire Marshal or other public agencies or authorities who investigate the crime of arson. The information or records obtained are closed records pursuant to Mo.Rev.Stat. § 320.085.

Mo.Rev.Stat. § 320.235: *Investigation Records of the State Fire Marshal.* The State Fire Marshal, in his discretion, may withhold from the public statements and testimony taken in an investigation or examination, correspondence relating to an investigation or examination, confidential reports of private persons and agents, and reports of investigations of fire losses. Such records are available only to the prosecutor of the county in which the fire loss occurred. *Id.*

Mo.Rev.Stat. § 367.055: *Information Provided to Law Enforcement Officials by Pawnbrokers.* Pawnbrokers, pursuant to local ordinance, may be required to furnish local law enforcement agencies with copies of certain transaction information. Mo.Rev.Stat. § 367.031. All such

information is confidential. Mo.Rev.Stat. § 367.055.

Mo.Rev.Stat. § 590.180: *Information Relating to Peace Officers.* The name, licensure status, commissioning, and employment of a peace officer is an open record. All other information is confidential.

Mo.Rev.Stat. § 549.500: *Pre-Parole Report and Supervision History.* Pre-parole reports and supervision histories of inmates in state correctional and penal institutions are privileged and are not to be disclosed except to the parole board, and at the discretion of the board, the defendant or prisoner or his attorney, or other person having a proper interest in the report (i.e., whenever the best interest or welfare of a defendant or prisoner makes the action desirable or helpful).

Mo.Rev.Stat. § 610.100: *Arrest Reports, Incident Reports, Investigative Reports and Daily Logs of Law Enforcement Agencies.* The Arrest Record Law, Mo.Rev.Stat. §§ 610.100 et seq. was amended in 1995 to distinguish between arrest, incident and investigation reports of law enforcement agencies.

Definitions. “Arrest reports” are records of an arrest and of any detention or confinement incident to an arrest. Mo.Rev.Stat. § 610.100.1(2). An “arrest” is defined as the actual restraint of the person of the defendant, or by his or her submission to custody, under authority of a warrant or otherwise for a criminal violation which results in the issuance of the summons or the person being booked. Mo.Rev.Stat. § 610.160.1(1). “Incident reports” consist of immediate facts and circumstances surrounding the initial report of a crime or incident, including any logs of reported crimes, accidents and complaints maintained by the law enforcement agency. Mo.Rev.Stat. § 610.100.1(4); *State ex rel. Goodman v. St. Louis Board of Police Commissioners*, 181 S.W.3d 156 (Mo.Ct.App. 2005) (only the information specifically delineated in § 610.100.1(a) is considered an open “Incident Report” under 610.100.2). “Investigative reports” are reports other than arrest reports or incident reports that are prepared by a law enforcement agency inquiring into a crime or suspected crime, either in response to an incident report or to evidence developed by law enforcement officers in the course of their duties. Mo.Rev.Stat. § 610.100.1(5).

Access. All arrest reports and incident reports are public records. Mo.Rev.Stat. § 610.100.2. However, if a person who is arrested is not charged with an offense within thirty days, official records of the arrest and of any confinement incidental to that arrest become closed records. *Id.* If a person who is arrested and charged, but the charge is later nolle prossed or dismissed, or the person is either found not guilty or received a suspended imposition of his sentence (“SIS”), records of the arrest and the criminal proceedings become closed records pursuant to Mo.Rev.Stat. § 610.105 “when such case is finally terminated.” See also *State ex rel. Pulitzer Missouri Newspapers, Inc. v. Seay*, 330 S.W.3d 823, 827 (Mo.Ct.App. 2011) (if imposition of sentence is suspended and probation is ordered, the case is not terminated until successful completion of probation).

Investigation reports are closed records until the investigation becomes “inactive.” *Id.* The term “inactive” is defined to include a decision by a law enforcement agency not to pursue a case, the expiration of the applicable statute of limitations, or the finality of convictions and exhaustion of all appeals. Mo.Rev.Stat. § 610.100.1(3). See also *The News-Press & Gazette Co. v. Catbarr*, 974 S.W.2d 576, 579-80 (Mo.Ct.App. 1998) (“investigative reports” exemption may apply until prosecution of the alleged offender is completed).

Law enforcement agencies are afforded discretion to withhold arrest, incident, or other reports or records if they contain information that is “reasonably likely to pose a clear and present danger to the safety of any victim, witness, undercover officer or other person.” Mo.Rev.Stat. § 610.100.3. Law enforcement agencies may also withhold otherwise public records if disclosure would “jeopardize a criminal investigation”, or would disclose the identity of a source wishing to remain confidential or of a suspect not in custody. *Id.* See *State ex rel. DeGaffenreid v. Keet*, 619 S.W.2d 873 (Mo.Ct.App. 1981) (held a “summons” does not constitute an arrest, and that § 610.105 does not

shield such records); *Charlier v. Corum*, 794 S.W.2d 676 (Mo.Ct.App. 1990) (inmate records retained by sheriff are public records subject to disclosure); *News-Press & Gazette Co., supra*, at 579-80 (Medical Examiner's office is a "law enforcement agency" and autopsy records are public records).

Any person, attorney for a person, or insurer of a person involved in any incident or whose property is involved in any incident may obtain any closed 911, arrest, incident or investigation records for the purpose of investigation of any civil claim or defense. Upon written request, any individual involved in an incident, or whose property was involved in an incident, his attorney or insurer, may obtain a complete, unaltered, and unedited incident report concerning the incident, and may obtain arrest and investigative reports which are closed. Within 30 days of such a request, the agency shall provide the requested material or file a motion with the circuit court having jurisdiction over the law enforcement agency stating the safety of the victim, witness or other individual cannot be reasonably ensured, or that the criminal investigation is likely to be jeopardized. If, based on such motion, the court finds for the law enforcement agency, the court shall either have the record closed or order such portion of the record that should be closed to be redacted. Mo.Rev.Stat. § 610.100.4.

Lawsuits Seeking Access to Information in Investigative Reports. The Arrest Records Law authorizes any person to file a lawsuit in circuit court seeking disclosure of information contained in an investigative report which would otherwise be a closed record. The circuit court may examine the investigation report *in camera* and is to consider whether the benefit to the person bringing the action outweighs any harm to the public, the law enforcement agency or officers, or any person identified in the investigative report. The court may order the person filing the lawsuit to pay the costs and attorneys fees of *both* parties, and may impose a fine of up to \$1,000 for knowing violations and \$5,000 for purposeful violations. Mo.Rev.Stat. § 610.100.6.

Daily Logs. Local law enforcement agencies that maintain a daily log or record that lists suspected crimes, accidents, or complaints are required to make certain limited information available to the public, including the time, substance and location of all complaints or requests for assistance, the time and nature of the agency's response, information relating to the underlying occurrence, the identity of certain victims, and a general description of the injuries, property or weapons involved. Mo.Rev.Stat. § 610.200.

Mo.Rev.Stat. § 610.150: "911" Reports. Information acquired by a law enforcement agency via "911" telephone reports are not available to the public pursuant to Mo.Rev.Stat. § 610.150.

10. Medical Records

Mo.Rev.Stat. § 167.183: *Immunization Records.* Immunization records may only be disclosed to certain persons enumerated in Mo.Rev.Stat. § 167.183, e.g., public agencies, schools, health care professionals. Disclosure of such records to other persons is prohibited. *Id.*

Mo.Rev.Stat. § 191.656: *HIV Testing.* Any information or records containing a person's HIV infection status or the results of any individual's HIV testing are confidential, and may be disclosed only to certain persons designated in Mo.Rev.Stat. § 191.656 (e.g., certain public agencies, adoptive or foster parents, day care facilities, group homes). The statute authorizes civil actions for violation. Mo.Rev.Stat. § 191.686 authorizes the Department of Health to identify children who test positive for HIV to schools that adopted a policy consistent with the recommendations of the Centers for Disease Control. Such schools may in turn release that information to certain persons who "need to know" the child's identity in order to provide proper health care.

Mo.Rev.Stat. § 191.731: *Pregnant Women Referred to the Department of Health for Substance Abuse Treatment.* Mo.Rev.Stat. § 191.731 provides that records and reports pertaining to women referred to the Department of Health for substance abuse treatment shall be con-

fidential. Mo.Rev.Stat. § 191.743 provides that records and reports to the Department of Health pertaining to pregnant women who are determined to be a high risk for substance abuse are also confidential.

Mo.Rev.Stat. § 192.067: *Patient Medical Information Reported to the Department Of Health.* The Missouri Department of Health is authorized to receive information from individual patient records from health professionals for the purpose of conducting epidemiological studies. Mo.Rev.Stat. § 192.067 renders such individually identifiable patient information confidential. The Department of Health may only release that information in statistical aggregate form, or to other public health authorities that agree to keep the information confidential. Any public health official or employee who knowingly releases information deemed confidential by this section may be found guilty of a misdemeanor.

Mo.Rev.Stat. § 198.032: *Nursing Home Residents.* Mo.Rev.Stat. § 198.032 provides that medical, social, personal, or financial records of any nursing home resident is confidential, only to be released upon a court order, or to certain enumerated agencies, law enforcement officials, or the person to whom the records pertain.

Mo.Rev.Stat. § 208.155: *Medical Assistance Program Records.* All information concerning applicants and recipients of medical assistance are confidential. Mo.Rev.Stat. § 208.155. Any disclosure of such information is restricted to purposes directly connected with the medical assistance program. *Id.*

Mo.Rev.Stat. § 210.040: *Blood Test Results for Syphilis or Hepatitis B in Pregnant Women.* If a pregnant woman consents to a blood test for syphilis or hepatitis B, and the result of that blood test is either positive or doubtfully positive, the physician or other health care professional is to report that information to the local county or city department of health. Mo.Rev.Stat. § 210.040. Such reports and the findings reported are confidential. *Id.*

Mo.Rev.Stat. § 210.824: *Artificial Insemination.* Records of artificial insemination of a woman with the consent of her husband, and under the supervision of a licensed physician, filed with the Bureau of Vital Records of the Missouri Department of Health, are confidential pursuant to Mo.Rev.Stat. § 210.824.

11. Mental Health Records

Mo.Rev.Stat. § 205.988: *Community Mental Health Services Records.* Records or information that identify persons who have received services from a community mental health center are confidential pursuant to Mo.Rev.Stat. § 205.988.

Mo.Rev.Stat. § 630.080: *Department of Mental Health Records.* Personally identifiable information retained by the Missouri Department of Mental Health is generally confidential pursuant to Mo.Rev.Stat. § 630.080.

Mo.Rev.Stat. § 630.140: *Residential Facilities and Day Programs Operated, Funded or Licensed by Department of Mental Health.* Records and information relating to voluntary or involuntary patients, residents or clients of residential facilities or day programs operated, funded or licensed by the Missouri Department of Mental Health are closed (with limited exceptions) pursuant to Mo.Rev.Stat. § 630.140.

Mo.Rev.Stat. § 630.167: *Department of Mental Health Investigation Reports.* Generally, Department of Mental Health investigation reports referring to abuse or neglect of mental patients, residents or clients are confidential except with respect to parents or guardians of the patient, resident or client who is the subject of the report. Mo.Rev.Stat. § 630.167. However, investigative reports pertaining to abuse and neglect are no longer confidential once a final report is complete, and final reports of substantiated abuse or neglect issues on or after August 28, 2007, are open and shall be available for release in accordance with chapter 610, unless the director of the department determines the release of the information would jeopardize the care of a patient who has not been adjudged incapacitated or the safety of the public.

However, the name and treatment of the patient and the names and descriptions of the complainant, witnesses or other persons for whom findings are not made against remain confidential. *Id.*

12. Miscellaneous Records

Mo.Rev.Stat. § 100.296: *Missouri Development Finance Board Act*. Certain provisions of the Missouri Development Finance Board Act are exempt from disclosure under the State and Local Records Law, Mo.Rev.Stat. § 109.200-310 and the Sunshine Law Mo.Rev.Stat. § 610.010-.030. Mo.Rev.Stat. § 100.296. *But Note:* The Missouri Development Finance Board Act does not exempt any MDFBA records from the Public Records Law, Mo.Rev.Stat. § 109.180 and 190. However, records and documents submitted to the Missouri Department of Economic Development, the Missouri Economic Development's Expert and Infrastructure Board, or to a regional planning commission, relating to financial investments in a business, sales projections, or other business plan information which may endanger the competitiveness of a business or that relates to tax credits (except the recipient and amount of the tax credit) are confidential. Mo.Rev.Stat. §§ 100.296 and 620.014.

Mo.Rev.Stat. § 105.961: *Missouri Ethics Commission*. Certain investigatory records and meetings of the Missouri Ethics Commission may be closed pursuant to Mo.Rev.Stat. § 105.961.

Mo.Rev.Stat. § 115.289: *Absentee Ballots*. Generally, lists of those applying for absentee ballots are closed under Mo.Rev.Stat. § 115.289, except to those identified in the statute, e.g., candidates.

Mo.Rev.Stat. § 191.317: *Missouri Genetic Disease Advisory Committee*. Records of the Missouri Genetic Disease Advisory Committee relating to tests and personal information obtained from individuals or specimens from any individual relating to genetics and metabolic diseases program are confidential unless the individual, parent or guardian consents to disclosure after being fully informed.

Mo.Rev.Stat. §§ 193.245 and .255: *Vital Records (Birth and Death Records)*. Vital records are certificates or reports of birth, death, marriage, divorce, and related data. Mo.Rev.Stat. § 193.015. Mo.Rev.Stat. § 193.245 provides that it is unlawful to permit inspection of or to release information from vital records, except as authorized by statute, regulation, or a court of competent jurisdiction. A list of names of persons who were born or died on a particular date may be disclosed. *Id.* The Department of Vital Records may also authorize the disclosure of information from vital records "for legitimate research purposes." *In Campbell & Associates Inc. v. Sharma*, No. 884-00076 (City of St. Louis Cir. Ct. 1988), the Missouri Circuit Court for the City of St. Louis held that reporters investigating news stories, as a matter of law, have such a "legitimate research purpose." In addition, Mo.Rev.Stat. § 193.255 provides that only those persons with a "direct and tangible interest" in a vital record may obtain a certified copy.

Mo.Rev.Stat. § 195.042: *Registration of Manufacturers, Distributors, or Dispensers of Controlled Substances*. All complaints, investigatory reports, and information concerning any applicant, registrant, or individuals registered by the Missouri Department of Health to manufacture, distribute, or dispense, or conduct research with controlled substances is confidential.

Mo.Rev.Stat. § 195.415: *Manufacturers, Wholesalers, Retailers of Controlled Substances or Chemicals*. Any person who sells, transfers, or otherwise furnishes certain enumerated chemicals must report to the Department of Health on all such transactions. Such reports are open to inspection by certain government officials. Mo.Rev.Stat. § 195.415. Otherwise, the reports are confidential. *Id.*

Mo.Rev.Stat. § 209.305: *Testing Materials of the Missouri Commission for the Deaf*. The Missouri Board of Certification of Interpreters certifies qualified sign language interpreters. Mo.Rev.Stat. § 209.292. All testing materials and records are confidential. Mo.Rev.Stat. § 209.305.

Mo.Rev.Stat. § 285.015: *Employee Lists for Earnings Taxes or Tables*. Lists of employees submitted by employers to municipal corporations levying an earnings tax are confidential and are not to be sold, given away or otherwise distributed by municipal corporations or their instrumentalities, and are not to be open to public inspection.

Mo.Rev.Stat. § 301.146: *Missouri Department of Revenue Records Pertaining to Special License Plates and Drivers Licenses*. Records pertaining to the request for, issuance of, retention of, or disposal of special license plates and drivers licenses issued for law enforcement or public safety purposes are not subject to public disclosure and are held by the Department of Revenue as confidential records.

Mo.Rev.Stat. § 302.291: *Department of Revenue Examinations*. The Director of the Missouri Department of Revenue may require a motor vehicle operator, whom the Director has good cause to believe is incompetent or unqualified to retain a driver's license, to submit to a reexamination. Mo.Rev.Stat. § 302.291. All reports made or medical records obtained by the Department of Revenue for purposes of making a determination of competency are confidential. *Id.*

Mo.Rev.Stat. § 326.134: *Missouri State Board of Accountancy Records Relating to Investigations and Peer Review*. All complaint files, investigation files, and other records relating to investigation of accountants by the State Board of Accountancy or Peer Review Committee are closed records under Mo.Rev.Stat. § 326.134. Final findings of fact and written decisions are to be public records. *Id.*

Mo.Rev.Stat. § 537.035: *Peer Review Committees for Health Care Professionals*. Proceedings, findings, deliberations, reports, and minutes of peer review committees concerning health care provided to patients are privileged and confidential pursuant to Mo.Rev.Stat. § 537.035.4.

Mo.Rev.Stat. § 620.010: *Applicants for Professional Registration*. All educational transcripts, test scores, complaints, investigatory reports and information pertaining to any person who is an applicant or licensee of any state agency assigned to the Missouri Division of Professional Registration are confidential. Mo.Rev.Stat. § 620.010.14

Mo.Rev.Stat. § 620.111: *Complaints, Investigatory Reports or Information Relating to Professionals Subject to the Division of Professional Registration*. Complaints, investigatory reports or information relating to professionals subject to the Division of Professional Registration of the Missouri Department of Economic Development (accountants, architects, engineers, land surveyors, barbers, beauticians, podiatrists, chiropractors, dentists, embalmers, funeral directors, physicians, nurses and other health care providers, optometrists, psychologists, pharmacists, real estate agents, brokers and escrow agents, veterinarians, speech pathologists, clinical audiologists, and hearing aid fitters and dealers) are closed pursuant to Mo.Rev.Stat. § 620.111.

13. Nursing Home Records

Mo.Rev.Stat. § 198.032: *Nursing Home Residents*. Mo.Rev.Stat. § 198.032 provides that medical, social, personal, or financial records of any nursing home resident are confidential, only to be released upon a court order, or to certain enumerated agencies, law enforcement officials, or the person to whom the records pertain.

Mo.Rev.Stat. § 198.032.2: *Inspections or Investigations of Nursing Homes*. Mo.Rev.Stat. § 198.032.2 requires that reports of inspections or investigations of nursing homes are open to the public, provided that the identity of any individual resident or of any person making a complaint about the nursing home is not revealed.

Mo.Rev.Stat. § 198.070.7: *Reports of Abuse or Neglect*. Reports relating to abuse or neglect of residents of convalescent, nursing and boarding homes are confidential. Mo.Rev.Stat. § 198.070.7. Such records are not subject to the provisions of either the Public Records Law, Mo.Rev.Stat. §§ 109.180 and 190, or the Sunshine Law, Mo.Rev.Stat. §§ 610.010 et seq. *Id.* Pursuant to Mo.Rev.Stat. § 660.320, the name of the complainant or any person mentioned in a complaint may

not be disclosed unless he or she consents, the Department of Social Services determines disclosure is necessary in order to prevent further abuse or neglect, or is required under other circumstances enumerated in the statute. *Id.*

Mo.Rev.Stat. § 660.605: *Records of the State Ombudsman for Long-Term Care Facility Residents.* The State Ombudsman for long-term care facility residents has discretion on whether to release any files pursuant to Mo.Rev.Stat. § 660.605.

14. Personnel and Employment Records

Mo.Rev.Stat. § 36.420: *Certain Personnel Records of State Merit Board.* Generally, the records of the personnel division of the State Merit Board are to be open for public inspection except where, by regulation, the records are made confidential for reasons of public policy. Mo.Rev.Stat. § 36.420.

Mo.Rev.Stat. § 105.1110: *Public Employees Suspended or Dismissed Under the Drug-Free Public Work Force Act.* Mo.Rev.Stat. § 105.1110 provides that personnel records of any public employee suspended or terminated pursuant to certain provisions of the Drug-Free Public Work Force Act are closed records.

Mo.Rev.Stat. § 213.077: *Complaints of Unlawful Employment Practices or Discrimination.* Complaints of unlawful employment practices or discrimination filed with the Missouri Human Rights Commission are generally open to the public. Mo.Rev.Stat. § 213.077. However, records relating to the Commission's investigation, settlement discussions or agreements are closed. *Id.*

Mo.Rev.Stat. § 287.280: *Self-Insured Employers for Workers' Compensation Liability.* Employers who are self-insured for workers' compensation liability pursuant to Mo.Rev.Stat. § 287.280 are required to provide to the Division of Workers' Compensation of the Missouri Department of Labor and Industrial Relations certain insurance premium rate data as listed in the statute. Any data or records submitted pursuant to § 287.280 or pursuant to any rule promulgated thereunder are confidential.

15. Welfare and Unemployment Records

Mo.Rev.Stat. § 208.120: *Welfare Records.* Missouri Department of Social Services records relating to the identity of applicants for or recipients of Aid to Families with Dependent Children (AFDC) or other welfare benefits and other records, files, papers and communications, are confidential, except in proceedings or investigations where benefits eligibility is called into question, or for purposes directly connected with the administration of public assistance.

Mo.Rev.Stat. § 208.120: *Applications for Public Welfare Benefits or Services.* Information obtained by State officials identifying the identity of applicants or recipients of public assistance is generally deemed confidential pursuant to Mo.Rev.Stat. § 208.120. The Missouri Division of Family Services may release to the public a monthly report identifying the name and address of all recipients of public assistance benefits, along with the amount paid to each recipient during the preceding month. *Id.* All other information is confidential. *Id.* The statute provides that the DFS list may not be used for commercial or political purposes, and prohibits publication of any name or list of names from the DFS list. *Id.* Willful violation of the statute is a misdemeanor. *Id.*

Mo.Rev.Stat. § 285.015: *Lists of Employees Furnished to Municipal Corporations.* Lists of employees furnished to municipal corporations to be used in connection with an earnings tax are confidential.

Mo.Rev.Stat. § 288.250: *Unemployment Compensation Records.* Information submitted by employers or individuals pursuant to the Missouri Employment Security Law are confidential and are not open to public inspection in any manner revealing an individual's or employer's identity except where there is a claim relating to unemployment compensation benefits.

Mo.Rev.Stat. § 290.520: *Minimum Wage Law Records.* Each employer subject to the Minimum Wage Law must make and provide to the Director of the Department of Labor and Industrial Relations certain information relating to employees as set forth in Mo.Rev.Stat. § 290.520. All information retained by the Director is confidential.

C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

There is no case law on this issue.

D. Are segregable portions of records containing exempt material available?

Mo.Rev.Stat. § 610.024 requires public governmental bodies to separate public material from exempt material and disclose the public material. Further, the section requires public governmental bodies "to the extent practicable" to facilitate the separation of public information from information exempt from disclosure. Other statutory provisions permit redaction of sensitive material and the release of redacted records. For example, Mo.Rev.Stat. § 610.100.4 allows the court to redact certain material from investigative reports that would otherwise be open to a small class of people including the victim of a crime and the victim's family.

E. Homeland Security Measures.

Operational guidelines and policies developed, adopted or maintained by any public agency responsible for law enforcement, public safety, first response, or public health for use in responding to "any critical incident which is or appears to be terrorist in nature and has the potential to endanger individual public safety or health. This exception does not close information relating to contracts and expenditures made in implementing these guidelines and policies. An agency seeking to use this exception must state in writing that disclosure would impair its ability to protect health or safety of persons and must further state in writing that the public interest in nondisclosure outweighs the public interest in disclosure. This provision sunsets on December 31, 2008." Mo.Rev.Stat. § 610.021(18).

III. STATE LAW ON ELECTRONIC RECORDS

In 1993 the Missouri Legislature enacted a new section of the Sunshine Law dealing specifically with electronic records. This section was amended in 2004. *See* Mo.Rev.Stat. § 610.029, now providing that a public governmental body may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of that agency.

A. Can the requester choose a format for receiving records?

A public governmental body "may" provide electronic services involving public records to members of the public. By statute, public governmental bodies are "strongly encouraged," but not required, "to make information available in usable electronic formats to the greatest extent feasible." A useable electronic format shall allow, at a minimum, viewing and printing of records. However, if electronic records are kept on a system capable of allowing the copying of electronic documents into other electronic documents, the public may request the data in electronic format and the governmental body "shall" comply. Mo.Rev.Stat. § 610.029.1. A separate provision allows that "[i]f records are requested in a certain format, the public body shall provide the records in the requested format, if such format is available." Mo.Rev.Stat. § 610.023.3.

B. Can the requester obtain a customized search of computer databases to fit particular needs?

Customized searches of computer databases are authorized, but not mandated, by the statute. *See* Mo.Rev.Stat. § 610.029.

C. Does the existence of information in electronic format affect its openness?

Electronic information is treated the same as paper information, and a public governmental body may not enter into a contract for the creation or maintenance of an electronic record database that as a practical matter makes the electronic records more difficult to inspect than ordinary records. Mo.Rev.Stat. § 610.029.1. In the instances where litigation has been brought to secure the information, the electronic status of the information was not an issue. *See, e.g., Pulitzer Publishing Co. v. Missouri State Employees' Retirement System*, 927 S.W.2d 477 (Mo.Ct.App. 1996) (pension payment records, which were stored electronically, were ordered disclosed).

D. How is e-mail treated?

The Sunshine Law requires that any member of a public governmental body who transmits any message relating to public business concurrently transmit the message either to the member's public office computer or to the custodian of records in the same format, becoming a public record (subject to the enumerated exceptions). Mo.Rev.Stat. § 610.026.1(1).

1. Does e-mail constitute a record?

E-mail can be a public record. Mo.Rev.Stat. § 610.026.1.

2. Public matter on government e-mail or government hardware

Records retained by a governmental body are public records. Mo.Rev.Stat. § 610.010(6).

3. Private matter on government e-mail or government hardware

There is no case law on this issue. However, records retained by a governmental body are public records. Mo.Rev.Stat. § 610.010(6).

4. Public matter on private e-mail

The Sunshine Law requires that any member of a public governmental body who transmits any message relating to public business concurrently transmit the message either to the member's public office computer or to the custodian of records in the same format, becoming a public record (subject to the enumerated exceptions). Mo.Rev.Stat. § 610.026.1(1).

5. Private matter on private e-mail

There is no case law on this issue.

E. How are text messages and instant messages treated?

There is no case law on this issue. However, records retained by a governmental body are public records. Mo.Rev.Stat. § 610.010(6).

1. Do text messages and/or instant messages constitute a record?

There is no case law on this issue. However, records retained by a governmental body are public records. Mo.Rev.Stat. § 610.010(6).

2. Public matter message on government hardware.

There is no case law on this issue. However, records retained by a governmental body are public records. Mo.Rev.Stat. § 610.010(6).

3. Private matter message on government hardware.

There is no case law on this issue.

4. Public matter message on private hardware.

There is no case law on this issue.

5. Private matter message on private hardware.

There is no case law on this issue.

F. How are social media postings and messages treated?

There is no case law on this issue.

G. How are online discussion board posts treated?

There is no case law on this issue.

H. Computer software

1. Is software public?

Software codes for electronic data processing and documentation thereof may be closed. Mo.Rev.Stat. § 610.021(10).

2. Is software and/or file metadata public?

Software codes for electronic data processing and documentation thereof may be closed. Mo.Rev.Stat. § 610.021(10).

I. How are fees for electronic records assessed?

The charge for all forms of electronic media includes only the cost of the copies and the staff time for making copies and programming, if necessary, and the cost of the disk, tape, or other medium used for the duplication. "Staff time" shall not exceed the average hourly rate of pay for staff of the governmental body. If programming is required beyond the "usual and customary" level to comply with a records request, the fees may include the actual cost of programming. Mo.Rev.Stat. § 610.026.1(2). *See also, R.L. Polk & Co. v. Missouri Dept. of Revenue*, 309 S.W.3d 811 (Mo.Ct.App. 2010) (the amount that can be charged for electronic records is not dependent on the number of records requested, but rather cannot exceed the actual cost to the governmental body of providing such records).

J. Money-making schemes.

1. Revenues.

See prior discussions of Mo.Rev.Stat. § 610.026 regarding fees in Section I.D., above. In addition, governmental bodies may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of that agency. Such a contract may not allow any impediment that as a practical matter makes it more difficult for the public to inspect or copy. Mo.Rev.Stat. § 610.029.1

2. Geographic Information Systems.

There is no separate fee provision for geographic information.

K. On-line dissemination.

Missouri operates an extensive Web site on the Internet. The information available on the site changes rapidly, and includes judicial decisions, administrative agency records and reports, and voluminous business registration information. The Missouri State Government home site can be found at <http://www.state.mo.us>.

IV. RECORD CATEGORIES -- OPEN OR CLOSED

A. Autopsy reports.

Coroners are required to prepare and file reports of autopsies performed on bodies where death by criminal action is suspected. Mo.Rev.Stat. § 58.451. Similarly, medical examiners are required to prepare and file reports of autopsies. Mo.Rev.Stat. §§ 58.720-.740. Whether records pertaining to autopsies performed by other licensed physicians or surgeons with consent, Mo.Rev.Stat. § 194.115, are public records depends on whether those records are retained by a public governmental body.

B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)

The Sunshine Law applies to administrative agencies. Mo.Rev.Stat. § 610.010(4). In addition, many statutes outside of the Sunshine Law deal with specific administrative bodies and procedures.

1. Rules for active investigations.

The Sunshine Law applies to administrative agencies. Mo.Rev.Stat. § 610.010(4). In addition, many statutes outside of the Sunshine Law deal with specific administrative bodies and procedures.

2. Rules for closed investigations.

The Sunshine Law applies to administrative agencies. Mo.Rev.Stat. § 610.010(4). In addition, many statutes outside of the Sunshine Law deal with specific administrative bodies and procedures.

C. Bank records.

Banks are not “public governmental bodies” under the Sunshine Law, therefore bank records are not public records subject to inspection. Savings and loan association books and records pertaining to accounts and loans of account holders, borrowers, and stockholders are confidential. Mo.Rev.Stat. § 369.099(2).

D. Budgets.

Budgets are not treated separately.

E. Business records, financial data, trade secrets.

Business records containing financial data and trade secrets of private companies that are retained by public governmental bodies are rarely subject to disclosure. For example, tax returns are confidential, Mo.Rev.Stat. § 32.057(l), records relating to scientific or technological innovations are confidential, Mo.Rev.Stat. § 610.021(15), computer programs may be confidential, Mo.Rev.Stat. § 610.021(10).

F. Contracts, proposals and bids.

Most contracts with a public governmental body are subject to disclosure. However, access to specifications for competitor bidding and sealed bids and related documents is restricted under Mo.Rev.Stat. § 610.021(11), (12).

G. Collective bargaining records.

Any records relating to preparation on behalf of a public governmental body or its representatives for negotiations with employee groups, including any discussions or work product, may be closed. Mo.Rev.Stat. § 610.021(9).

H. Coroners reports.

There are no reported decisions on whether records relating to autopsies performed by coroners or medical examiners are subject to the Sunshine Law. Such records arguably fall within the exception set forth in Mo.Rev.Stat. § 610.021(5) relating to “nonjudicial . . . physical health proceedings involving identifiable persons.” Such autopsy reports are not closed in Chapter 58, Mo.Rev.Stat. (“Coroners and Inquests”). However, coroners are required to prepare and file reports of autopsies performed on bodies where death by criminal action is suspected. Mo.Rev.Stat. § 58.451. Similarly, medical examiners are required to prepare and file reports of autopsies. Mo.Rev.Stat. § 58.720-.740.

I. Economic development records.

Records and documents submitted to the department of economic development, to the Missouri economic development, export and infrastructure board, or to a regional planning commission formed pursuant to chapter 251, relating to financial investments in a business, or sales projections or other business plan information which may endanger the competitiveness of a business, or records pertaining to a business prospect with which the department, board, or commission is currently negotiating, may be deemed a closed record. Mo.Rev.Stat. § 620.014.

J. Election records.

1. Voter registration records.

Voter registration records are open, but cannot be used for commercial purposes. Mo.Rev.Stat. § 115.158.6.

2. Voting results.

All public records on file in the Secretary of State’s office are subject to inspection by any person during regular business hours. Mo.Rev.Stat. § 28.070. Not later than the second Tuesday after an election, a voting verification board must issue a statement announcing the results of each election in its jurisdiction. Mo.Rev.Stat. § 115.507.1. A similar law requires announcements to be made by a board of canvassers convened by the Secretary of State. Mo.Rev.Stat. § 115.511. Each person nominated after a primary is to be issued a certificate of nomination. Mo.Rev.Stat. § 115.523. Within two days after the first meeting of each General Assembly, the Secretary of State must “lay before each house a list of its elected members.” Mo.Rev.Stat. § 115.525. Voted ballots are to be kept for one year by the election authority. However, during that year, the election authority shall not open or inspect them or allow anyone else to do so except a legislative body trying an election contest, a court or a grand jury. After one year the records may be destroyed, unless there is an ongoing contest, investigation or case. Mo.Rev.Stat. § 115.493.

K. Gun permits.

Records of permits are closed to the public. Mo.Rev.Stat. § 571.093.

L. Hospital reports.

If a hospital constitutes a public governmental body, its records are subject to disclosure under the Sunshine Law unless a particular exception applies. For example, budgetary and policy-oriented discussions of a Hospital Board may be open to public inspection; however, individual patient records would not be open to inspection by the general public. Mo.Rev.Stat. § 610.021(5) (records relating to nonjudicial mental or health proceedings involving identifiable persons may be closed to the public). Various Missouri statutes close certain medical, mental and nursing home records.

Mo.Rev.Stat. § 167.183: *Immunization Records*. Immunization records may only be disclosed to certain persons enumerated in Mo.Rev.Stat. § 167.183, e.g., public agencies, schools, health care professionals. Disclosure of such records to other persons is prohibited. *Id.*

Mo.Rev.Stat. § 191.656: *HIV Testing*. Any information or records containing a person’s HIV infection status or the results of any individual’s HIV testing is confidential, and may be disclosed only to certain persons designated in Mo.Rev.Stat. § 191.656 (e.g., certain public agencies, adoptive or foster parents, day care facilities, group homes). The statute authorizes civil actions for violation. Mo.Rev.Stat. § 191.686 authorizes the Department of Health to identify children who test positive for HIV to schools that adopted a policy consistent with the recommendations of the Centers for Disease Control. Such schools may in turn release that information to certain persons who “need to know” the child’s identity in order to provide proper health care.

Mo.Rev.Stat. § 191.731: *Pregnant Women Referred to the Department of Health for Substance Abuse Treatment*. Mo.Rev.Stat. § 191.731 provides that records and reports pertaining to women referred to the Department of Health for substance abuse treatment shall be confidential. Mo.Rev.Stat. § 191.743 provides that records and reports to the Department of Health pertaining to pregnant women who are determined to be a high risk for substance abuse are also confidential.

Mo.Rev.Stat. § 192.067: *Patient Medical Information Reported to the Department Of Health*. The Missouri Department of Health is authorized to receive information from individual patient records from health professionals for the purpose of conducting epidemiological studies. Mo.Rev.Stat. § 192.067 renders such individually identifiable patient information confidential. The Department of Health may only release that information in statistical aggregate form, or to other public health authorities that agree to keep the information confidential. Any public health official or employee who knowingly releases information deemed confidential by this section may be found guilty of a misdemeanor.

Mo.Rev.Stat. § 198.032: *Nursing Home Residents*. Mo.Rev.Stat. § 198.032 provides that medical, social, personal, or financial records of any nursing home resident is confidential, only to be released upon a court order, or to certain enumerated agencies, law enforcement officials, or the person to whom the records pertain.

Mo.Rev.Stat. § 208.155: *Medical Assistance Program Records*. All information concerning applicants and recipients of medical assistance are confidential. Mo.Rev.Stat. § 208.155. Any disclosure of such information is restricted to purposes directly connected with the medical assistance program. *Id.*

Mo.Rev.Stat. § 210.040: *Blood Test Results for Syphilis or Hepatitis B in Pregnant Women*. If a pregnant woman consents to a blood test for syphilis or hepatitis B, and the result of that blood test is either positive or doubtfully positive, the physician or other health care professional is to report that information to the local county or city department of health. Mo.Rev.Stat. § 210.040. Such reports and the findings reported are confidential. *Id.*

Mo.Rev.Stat. § 210.824: *Artificial Insemination*. Records of artificial insemination of a woman with the consent of her husband, and under the supervision of a licensed physician, filed with the Bureau of Vital Records of the Missouri Department of Health, are confidential pursuant to Mo.Rev.Stat. § 210.824.

Mo.Rev.Stat. § 205.988: *Community Mental Health Services Records*. Records or information that identify persons who have received services from a community mental health center are confidential pursuant to Mo.Rev.Stat. § 205.988.

Mo.Rev.Stat. § 630.080: *Department of Mental Health Records*. Personally identifiable information retained by the Missouri Department of Mental Health is generally confidential pursuant to Mo.Rev.Stat. § 630.080.

Mo.Rev.Stat. § 630.140: *Residential Facilities and Day Programs Operated, Funded or Licensed by Department of Mental Health*. Records and information relating to voluntary or involuntary patients, residents or clients of residential facilities or day programs operated, funded or licensed by the Missouri Department of Mental Health are closed (with limited exceptions) pursuant to Mo.Rev.Stat. § 630.140.

Mo.Rev.Stat. § 630.167: *Department of Mental Health Investigation Reports*. Department of Mental Health investigation reports referring to abuse or neglect of mental patients, residents or clients are confidential except with respect to parents or guardians of the patient, resident or client who is the subject of the report. Mo.Rev.Stat. § 630.167. However, investigative reports pertaining to abuse and neglect are no longer confidential once a final report is complete, and final reports of substantiated abuse or neglect issues on or after August 28, 2007, are open and shall be available for release in accordance with chapter 610, unless the director of the department determines the release of the information would jeopardize the care of a patient who has not been adjudged incapacitated or the safety of the public. However, the name and treatment of the patient and the names and descriptions of the complainant, witnesses or other persons for whom findings are not made against remain confidential. *Id.*

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Mo.Rev.Stat. § 198.032.2: *Inspections or Investigations of Nursing Homes*. Mo.Rev.Stat. § 198.032.2 requires that reports of inspections or investigations of nursing homes are open to the public, provided that the identity of any individual resident or of any person making a complaint about the nursing home is not revealed.

Mo.Rev.Stat. § 198.070.7: *Reports of Abuse or Neglect*. Reports relating to abuse or neglect of residents of convalescent, nursing and board-

ing homes are confidential. Mo.Rev.Stat. § 198.070.7. Such records are not subject to the provisions of either the Public Records Law, Mo.Rev.Stat. §§ 109.180 and 190, or the Sunshine Law, Mo.Rev.Stat. §§ 610.010 et seq. *Id.* Pursuant to Mo.Rev.Stat. § 660.320, the name of the complainant or any person mentioned in a complaint may not be disclosed unless he or she consents, the Department of Social Services determines disclosure is necessary in order to prevent further abuse or neglect, or it is required under other circumstances enumerated in the statute. *Id.*

M. Personnel records.

1. Salary.

The salary of a public employee is an open record. Mo.Rev.Stat. § 610.021(13). The term “salary” has been held to include pension benefits, *Pulitzer Publishing Co. v. Missouri State Employees’ Retirement System*, 927 S.W.2d 477 (Mo.Ct.App. 1996), and severance pay. *Li-brach v. Cooper*, 778 S.W.2d 351 (Mo.Ct.App. 1989).

2. Disciplinary records.

Records relating to hiring, firing, disciplining or promoting employees of a public governmental body may be closed when personal information is discussed. Mo.Rev.Stat. § 610.021(3). *See Wolfskill v. Henderson*, 823 S.W.2d 112, 114 (Mo.Ct.App. 1991) (held police department internal investigative reports not subject to disclosure under Sunshine Law); *Wilson v. McNeil*, 575 S.W.2d 802, 806 (Mo.Ct.App. 1978) (records of police department pertaining to investigation into death of man in police custody may be closed). *But see Guyer v. City of Kirkwood*, 38 S.W.3d 412 (Mo. 2001) (finding that internal police investigation report was open to the public because Mo.Rev.Stat. § 610.021(3) conflicted with a section of the state open records law demanding release of all inactive incident and investigation reports). Personal information is defined to include only information relating to the performance or merit of individual employees. Mo.Rev.Stat. § 610.021(3).

3. Applications.

Individually identifiable personnel records pertaining to employees or applicants for employment may also be closed. Mo.Rev.Stat. § 610.021(13). However, the names, positions, salaries, and lengths of service of officers and employees once they are employed as such are public records. Mo.Rev.Stat. § 610.021(13).

4. Personally identifying information.

Individually identifiable personal records may be closed. Mo.Rev.Stat. § 610.021(13). Social security numbers must be closed (with limited exceptions). Mo.Rev.Stat. § 610.035.

5. Expense reports.

No reported cases were found dealing specifically with expense reports.

6. Other.

The names, positions, salaries and length of service of public employees are the only personnel records presumed to be open. Mo.Rev.Stat. § 610.021(13).

N. Police records.

1. Accident reports.

Certain information may be available if maintained on a law enforcement agency’s daily log. However, where a municipality has adopted the Model Traffic Ordinance, certain accident reports are unavailable. Mo.Rev.Stat. § 300.125.

2. Police blotter.

Local law enforcement agencies that maintain a daily log or record that lists suspected crimes, accidents, or complaints are required to make certain limited information available to the public, including

the time, substance and location of all complaints or requests for assistance, the time and nature of the agency's response, information relating to the underlying occurrence, the name and age of certain victims, and a general description of the injuries, property or weapons involved. Mo.Rev.Stat. § 610.200. This provision has been amended to eliminate a 30-day waiting period for release of this information to the general public. The media has been one of a limited class of those privileged to see the daily logs during the waiting period.

3. 911 tapes.

Information acquired by a law enforcement agency by way of a complaint or report of a crime made by telephone contact using the emergency number, "911," is inaccessible to the general public. Mo.Rev.Stat. § 610.150. Such information is only available to law enforcement agencies, the division of workers' compensation, or to those persons who have secured a court order upon good cause shown. *Id.*

4. Investigatory records.

Investigative reports are closed records until the investigation becomes "inactive." Mo.Rev.Stat. § 610.100.2. The term "inactive" is defined to include a decision by a law enforcement agency not to pursue a case, the expiration of the applicable statute of limitations, or the finality of convictions and exhaustion of all appeals. Mo.Rev.Stat. § 610.100.1(3).

a. Rules for active investigations.

See above.

b. Rules for closed investigations.

See above.

5. Arrest records.

The Arrest Record Law, Mo.Rev.Stat. § 610.100 et seq., was amended in 1995 to distinguish between arrest, incident and investigation reports of law enforcement agencies.

Definitions. "Arrest reports" are records of an arrest and of any detention or confinement incident to an arrest. Mo.Rev.Stat. § 610.100.1(2). An "arrest" is defined as the actual restraint of the person of the defendant, or by his or her submission to custody, under authority of a warrant or otherwise for a criminal violation which results in the issuance of the summons or the person being booked. Mo.Rev.Stat. § 610.160.1(1). "Incident reports" consist of immediate facts and circumstances surrounding the initial report of a crime or incident, including any logs of reported crimes, accidents and complaints maintained by the law enforcement agency. Mo.Rev.Stat. § 610.100.1(4). "Investigative reports" are reports other than arrest reports or incident reports that are prepared by a law enforcement agency inquiring into a crime or suspected crime, either in response to an incident report or to evidence developed by law enforcement officers in the course of their duties. Mo.Rev.Stat. § 610.100.1(5)

Access. All arrest reports and incident reports are public records. Mo.Rev.Stat. § 610.100.2. However, if a person who is arrested is not charged with an offense within thirty days, official records of the arrest and of any confinement incidental to that arrest become closed records. *Id.* If a person who is arrested and charged, but the charge is later nolle prossed or dismissed, or the person is either found not guilty or received a suspended imposition of his sentence ("SIS"), records of the arrest and the criminal proceedings become closed records pursuant to Mo.Rev.Stat. § 610.105, "when such case is finally terminated." See *State ex rel. Pulitzer Missouri Newspapers, Inc. v. Seay*, 330 S.W.3d 823, 827 (Mo.Ct.App. 2011) (if imposition of sentence is suspended and probation is ordered, the case is not terminated until successful completion of probation).

Law enforcement agencies are afforded discretion to withhold arrest, incident, or other reports or records if they contain information that is "reasonably likely to pose a clear and present danger to the safety of any victim, witness, undercover officer or other person."

Mo.Rev.Stat. § 610.100.3. Law enforcement agencies may also withhold otherwise public records if disclosure would "jeopardize a criminal investigation," or would disclose the identity of a source wishing to remain confidential or of a suspect not in custody. *Id.* See *State ex rel. DeGaffenreid v. Keet*, 619 S.W.2d 873 (Mo.Ct.App. 1981) (held a "summons" does not constitute an arrest, and that § 610.105 does not shield such records); *Charlier v. Corum*, 794 S.W.2d 676 (Mo.Ct.App. 1990) (inmate records retained by sheriff are public records subject to disclosure); *News-Press & Gazette Co., supra*, at 579-80 (Medical Examiner's office is a "law enforcement agency" and autopsy records are public records).

Any person, attorney for a person, or insurer of a person involved in any incident or whose property is involved in any incident may obtain any closed 911, arrest, incident or investigation records for the purpose of investigation of any civil claim or defense. Upon written request, any individual involved in an incident, or whose property was involved in an incident, his attorney or insurer, may obtain a complete, unaltered, and unedited incident report concerning the incident, and may obtain arrest and investigative reports which are closed. Within 30 days of such a request, the agency shall provide the requested material or file a motion with the circuit court having jurisdiction over the law enforcement agency stating the safety of the victim, witness or other individual cannot be reasonably ensured, or that the criminal investigation is likely to be jeopardized. If, based on such motion, the court finds for the law enforcement agency, the court shall either have the record closed or order such portion of the record that should be closed to be redacted. Mo.Rev.Stat. § 610.100(4).

Lawsuits Seeking Access to Information in Investigative Reports. The 1995 amendments to the Arrest Records Law authorizes any person to file a lawsuit in circuit court seeking disclosure of information contained in an investigative report which would otherwise be a closed record. The circuit court may examine the investigation report *in camera* and is to consider whether the benefit to the person bringing the action outweighs any harm to the public, the law enforcement agency or officers, or any person identified in the investigative report. The court may order the person filing the lawsuit to pay the costs and attorneys fees of *both* parties. Mo.Rev.Stat. § 610.100.5

6. Compilations of criminal histories.

No specific provision.

7. Victims.

Law enforcement agencies are afforded discretion to withhold arrest, incident, or other reports or records if they contain information that is "reasonably likely to pose a clear and present danger to the safety of any victim, witness, undercover officer or other person." Mo.Rev.Stat. § 610.100.3. See *Hyde v. City of Columbia*, 637 S.W.2d 251 (Mo. Ct.App. 1982) (judicially created exception permitting withholding of victim's name while accused was still at large).

8. Confessions.

No specific provision.

9. Confidential informants.

Law enforcement agencies are afforded discretion to withhold arrest, incident, or other reports or records if they contain information that is "reasonably likely to pose a clear and present danger to the safety of any victim, witness, undercover officer or other person." Mo.Rev.Stat. § 610.100.3. See *Hyde v. City of Columbia*, 637 S.W.2d 251 (Mo. Ct.App. 1982) (judicially created exception permitting withholding of victim's name while accused was still at large).

10. Police techniques.

No specific provision.

11. Mug shots.

No specific provision.

12. Sex offender records.

Sex offenders must register their names with the chief law enforcement officer of the county. Mo.Rev.Stat. § 589.400. That officer may post the information open to the public in searchable form on the internet or publish it in newspapers. Mo.Rev.Stat. § 589.402. The public information includes: name; aliases; birth date; physical description; residence, temporary, school and work addresses; photograph; physical description of motor vehicle and other vehicle information; nature and dates of the sexual offenses qualifying the offender for the registry; date of release from custody or placed on parole or probation; compliance status with the registration law; and online identifiers. Mo.Rev.Stat. § 589.402.3(1)-(10). The Missouri Highway Patrol must operate a toll-free number to disseminate registration information. Mo.Rev.Stat. § 43.533.1.

13. Emergency medical services records.

Ambulance services and emergency medical response agencies shall maintain records of each patient and keep the records for five years. Mo.Rev.Stat. § 190.175(1) and (2). The records are available to the Department of Health and Senior Services. Mo.Rev.Stat. § 190.175.5.

O. Prison, parole and probation reports.

Pre-parole reports and supervision histories of inmates in state correctional and penal institutions are privileged and are not to be disclosed except to the parole board, and at the discretion of the board, to the defendant or prisoner or his attorney, or other person have a proper interest in the report (i.e., whenever the best interest or welfare of a defendant or prisoner makes the action desirable or helpful). Mo.Rev.Stat. § 549.500.

Any meeting, record, or vote, of proceedings involving probation, parole, or pardon may be a closed meeting, closed record, or closed vote. Mo.Rev.Stat. § 217.670.5.

P. Public utility records.

Only if a public utility constitutes a “public governmental body” as defined in Mo.Rev.Stat. § 610.010(2) are its records subject to disclosure.

Q. Real estate appraisals, negotiations.

Government records relating to the leasing, purchase or sale of real estate by a public governmental body may be closed. Mo.Rev.Stat. § 610.021(2). Such records, including minutes of closed meetings, may be closed even if no actual lease, purchase or sale of real estate results. *See State ex rel. Birk v. City of Jackson*, 907 S.W.2d 181, 187 (Mo.Ct.App. 1995).

Before a “real estate” record may be closed, the public governmental body must first find that public knowledge of the transaction might adversely affect the legal consideration for that real estate. § 610.021(2).

Minutes of closed meetings, votes or other public records approving the contract relating to the leasing, purchase or sale of real estate by a public governmental body must be made public upon execution of the lease, purchase or sale of the real estate.

See State ex rel. Birk v. City of Jackson, 907 S.W.2d 181, 187 (Mo.Ct.App. 1995) (holding that the city properly withheld minutes of closed council meetings where agreements to operate city-owned landfill were discussed with independent contractors until the agreements were finally approved); *City of St. Louis v. City of Bridgton*, 806 S.W.2d 717, 719 (Mo.Ct.App. 1991) (holding that the meaning of the term “transaction” in the real estate exception is broad enough to encompass multi-lot bulk real estate acquisition or buyout program by public governmental body, and contracts on individual lots need not be available for public inspection until buyout program is complete and knowledge of purchase prices on individual lots would not adversely affect subsequent contracts); *Tipton v. Barton*, 747 S.W.2d 325, 331 (Mo.Ct.App. 1988) (mere reference in a public record to a real estate transaction is not sufficient to trigger application of the real

estate exception; the exception applies only where the actual terms of any real estate transaction or a negotiating position of the public governmental body is reflected in the record).

1. Appraisals.

Appraisal records must be maintained for five years and made available to the Missouri Real Estate Commission upon request. Mo.Rev.Stat. § 339.537.

2. Negotiations.

See above.

3. Transactions.

See above.

4. Deeds, liens, foreclosures, title history.

Every instrument that conveys any real estate must be recorded in the office of the recorder of the county in which such real estate is located. Mo.Rev.Stat. § 442.380. In addition, foreclosure notices must be publicly published. Mo.Rev.Stat. § 443.320.

5. Zoning records.

Zoning regulations and restrictions cannot be implemented without a public hearing and the opportunity for parties in interest and citizens to be heard. Mo.Rev.Stat. § 89.050.

R. School and university records.

Institutions of higher education are public governmental bodies. Mo.Rev.Stat. § 610.010(4)(a).

1. Athletic records.

No specific provision.

2. Trustee records.

Public universities must comply with the Sunshine Law. *Tipton v. Barton*, 747 S.W.2d 325, 329 (Mo.Ct.App. 1988); *MacLachlan v. McNary*, 684 S.W.2d 534, 537 (Mo.Ct.App. 1984).

3. Student records.

Scholastic records are closed except to certain interested parties (students, parents, guardians, etc.). Mo.Rev.Stat. § 610.021(6). The scholastic records exception does not apply to criminal investigation and incident reports prepared by university law enforcement. *Bauer v. Kincaid*, 759 F.Supp. 575 (W.D. Mo. 1991).

4. Other.

Testing and examination materials can be closed before the test is given (or to be given again). Mo.Rev.Stat. § 610.021(7). Average standardized test scores for each grade of each elementary school are public records according to the Attorney General. Of. Atty. Gen. # 68-93, Shields, May 5, 1993.

S. Vital statistics.

Vital records are certificates or reports of birth, death, marriage, divorce, and related data. Mo.Rev.Stat. § 193.015. Mo.Rev.Stat. § 193.245 provides that it is unlawful to permit inspection of or to release information from vital records, except as authorized by statute, regulation, or a court of competent jurisdiction. A list of names of persons who were born or died on a particular date may be disclosed. *Id.* The Department of Vital Records may also authorize the disclosure of information from vital records “for legitimate research purposes” and death records over fifty years old. *Id.* In *Campbell & Associates, Inc. v. Sharma*, No. 884‑00076 (City of St. Louis Cir. Ct. 1988), the Missouri Circuit Court for the City of St. Louis held that reporters investigating news stories, as a matter of law, have such a “legitimate research purpose.” In addition, Mo.Rev.Stat. § 193.255 provides that only those persons with a “direct and tangible interest” in a vital re-

cord may obtain a certified copy.

1. Birth certificates.

See above.

2. Marriage & divorce.

See above.

3. Death certificates.

See above.

4. Infectious disease and health epidemics.

Mo.Rev.Stat. § 191.656: *HIV Testing*. Any information or records containing a person's HIV infection status or the results of any individual's HIV testing are confidential, and may be disclosed only to certain persons designated in Mo.Rev.Stat. § 191.656 (e.g., certain public agencies, adoptive or foster parents, day care facilities, group homes). The statute authorizes civil actions for violation. Mo.Rev.Stat. § 191.686 authorizes the Department of Health to identify children who test positive for HIV to schools that adopted a policy consistent with the recommendations of the Centers for Disease Control. Such schools may in turn release that information to certain persons who "need to know" the child's identity in order to provide proper health care.

V. PROCEDURE FOR OBTAINING RECORDS

Procedures for requesting access to public records are set forth in the Sunshine Law, Mo.Rev.Stat. § 610.023. Procedures for requesting public records pursuant to the Public Records Law, Mo.Rev.Stat. § 109.180, are not codified. Rather, a public body may establish "reasonable rules and conditions" for public records requested pursuant to Mo.Rev.Stat. § 109.180. *State ex rel. Gray v. Brigham*, 622 S.W.2d 734, 735 (Mo.Ct.App. 1981). The remainder of this section deals with procedures for disclosure under the Sunshine Law.

A. How to start.

1. Who receives a request?

Each public governmental body is to provide a reasonable written policy, open to public inspection, regarding the release of information on any meeting, record or vote. Mo.Rev.Stat. § 610.028.2. When in doubt about a particular body's procedures, ask to review this written policy. Requests for access to public records should be directed to the custodian of those records. Each public governmental body is required by the Sunshine Law to appoint a custodian who is to be responsible for maintenance of that body's records. Mo.Rev.Stat. § 610.023.1. The identity and location of a public governmental body's custodian is to be made available upon request. *Id.*; *Pennington v. Dobbs*, 235 S.W.3d 77, 79 (Mo.Ct.App. 2007).

2. Does the law cover oral requests?

Requests for access to public records may be made orally or in writing. For routine requests to which an objection is unlikely, oral requests are sufficient. However, if opposition to access is anticipated, a written and dated request is recommended.

a. Arrangements to inspect & copy.

Each request for access to public records is to be acted upon as soon as possible, but in no event longer than three business days following the request, except for good cause. Mo.Rev.Stat. § 610.023.3. However, if a given request is burdensome, it is wise to make arrangements with the custodian beforehand. If access is not provided within the statutory period, the custodian must give a detailed explanation of the reason for the delay and identify the place and the earliest time that the record will be available for inspection.

b. If an oral request is denied:

If an oral request for access to public records is denied, the person

making the request should request a written statement of the grounds for the denial by the custodian. Upon such a request, the custodian must provide a written statement citing the specific provision of law under which access is denied no later than the third business day following the date that the request for the statement is received. Mo.Rev.Stat. § 610.023.4. The request for a written statement from the custodian is not required by the Sunshine Law to be in writing. However, it is advisable to make or confirm the request in writing to document the date on which the request was made.

(1). How does the requester memorialize the refusal?

There is no specific law on this.

(2). Do subsequent steps need to be in writing?

Nothing in the Sunshine indicates a need for a written request..

3. Contents of a written request.

The Sunshine Law does not set requirements for written requests for access to public records. However, the records requested should be identified to enable the custodian to locate the particular records of interest. The Sunshine Law authorizes the custodian to require payment of any fees prior to the making of copies. Mo.Rev.Stat. § 610.026(2). Therefore, a written request should include an offer to pay such fees.

a. Description of the records.

There is no statutory or case law addressing this issue.

b. Need to address fee issues.

There is no statutory or case law addressing this issue.

c. Plea for quick response.

There is no statutory or case law addressing this issue.

d. Can the request be for future records?

There is no statutory or case law addressing this issue.

e. Other.

There is no statutory or case law addressing this issue.

B. How long to wait.

1. Statutory, regulatory or court-set time limits for agency response.

Three Business Days Rule and "Reasonable Cause" Exception. The Sunshine Law requires that each request for access to a public record be acted upon as soon as possible, and in no event later than the end of the third business day following the date the request is received by the custodian of records of a public governmental body. Mo.Rev.Stat. § 610.023.3. The three-day period for document production may be exceeded for "reasonable cause." *Id.* If access to requested public records is not granted within the three-day period, the Sunshine Law requires the custodian to give a detailed explanation of the cause for further delay and the place and earliest time and date that the requested records will be available for inspection. *Id.*

2. Informal telephone inquiry as to status.

Informal telephone inquiry as to the status of the request is permitted. As with most governmental agencies, the success of such inquiries is largely dependent on the mood of the governmental employee and the civility of the inquiry.

3. Is delay recognized as a denial for appeal purposes?

There is no specific guidance for determining when a reasonable denial has become a de facto denial.

4. Any other recourse to encourage a response.

If access to requested public records is denied, the person making the request for records should request a written statement from the custodian stating the grounds for the denial.

C. Administrative appeal.

The Sunshine Law does not provide for an express right of an administrative appeal. An informal administrative “appeal” to a superior may be successful and less expensive than litigation.

1. Time limit.

There are no administrative appeals, but the time limit for a challenge in the circuit court is one year after the violation is ascertainable, but no more than two years after the violation.

2. To whom is an appeal directed?

A challenge to a failure to adhere to the Sunshine law is to be brought in the circuit court for the county in which the governmental body has its principal place of business. Mo.Rev.Stat. § 610.027.1.

b. A state commission or ombudsman.

N/A

3. Fee issues.

A challenge to a failure to adhere to the Sunshine law is to be brought in the circuit court for the county in which the governmental body has its principal place of business. Mo.Rev.Stat. § 610.027.1.

4. Contents of appeal letter.

N/A

5. Waiting for a response.

N/A

6. Subsequent remedies.

N/A

D. Court action.

1. Who may sue?

Any aggrieved person, taxpayer, or citizen of Missouri, the Attorney General or prosecuting attorney may seek judicial enforcement of the requirements of the Sunshine Law. Mo.Rev.Stat. § 610.027.1.

2. Priority.

The Sunshine Law does not require that access cases be given priority on court dockets. However, most such cases under the Sunshine Law request injunctive relief. Frequently, motions for preliminary injunctions are heard on an expedited basis. Once a hearing is set on a motion for preliminary injunction, a request to consolidate the hearing on the merits with the hearing on the motion for preliminary injunction is often granted.

3. Pro se.

Pro se actions to enforce the Sunshine Law are not prohibited. However, in light of the highly technical arguments frequently advanced in support of and in opposition to disclosure, advice and participation of counsel is recommended.

4. Issues the court will address:

The court will consider the reasons for the denial, fees charged for the records and any unreasonable delays. The Sunshine Law authorizes a public governmental body which is in doubt about the legality of closing a particular meeting, record, or vote to bring a suit at its own expense in the circuit court of the county of its principal place of business to ascertain the propriety of any such action. Mo.Rev.Stat. § 610.027(5). However, a court will not provide declaratory relief unless there is an actual meeting, record or vote at issue. *See Fulson v. Kansas*

City Star Company, 816 S.W.2d 297, 299 (Mo.Ct.App. 1991) (denied declaratory relief sought by board of directors of school district and newspaper because questions were abstract, and did not relate to particular meetings, records, or votes of the school district).

a. Denial.

A court has held that a Sunshine Law request was properly denied where the requesting individual asked for the governmental body to create a new, customized record, as opposed to requesting access to existing records in the possession of the governmental body. *Jones v. Jackson County Circuit Court*, 2005 Mo. App. LEXIS 231 (Mo.Ct.App. Feb. 8, 2005).

b. Fees for records.

Courts will address fee issues. *See, e.g., R.L. Polk & Co. v. Missouri Dept. of Revenue*, 309 S.W.3d 881 (Mo.Ct.App. 2010).

c. Delays.

Courts will address delays that violate the Sunshine Law. Requests for records must be acted upon as soon as possible, but in no event later than three business days without reasonable cause for the delay (and any delay must be accompanied by a “detailed explanation of the cause of further delay and the place and earliest time and date that the record will be available.” *See* Mo.Rev.Stat. § 610.023.4.

d. Patterns for future access (declaratory judgment).

The Sunshine Law authorizes a public governmental body which is in doubt about the legality of closing a particular meeting, record, or vote to bring a suit at its own expense in the circuit court of the county of its principal place of business to ascertain the propriety of any such action. Mo.Rev.Stat. § 610.027(5). However, a court will not provide declaratory relief unless there is an actual meeting, record or vote at issue. *See Fulson v. Kansas City Star Company*, 816 S.W.2d 297, 299 (Mo. Ct.App. 1991) (denied declaratory relief sought by board of directors of school district and newspaper because questions were abstract, and did not relate to particular meetings, records, or votes of the school district).

5. Pleading format.

An action under the Sunshine Law does not have any particular pleading requirements different from any other civil action. Because a petition failed to allege that the village’s custodian of records had actually received a citizen’s request for access to information, the citizen failed to state a claim for violation of the Sunshine Law. *Anderson v. Jacksonville*, 103 S.W.3d 190 (Mo.Ct.App. 2003). Once the party seeking judicial enforcement of the Sunshine Law demonstrates the body in question is subject to the Sunshine Law and has held a closed meeting, record or vote, the burden shifts to the governmental body to demonstrate compliance with the Sunshine Law. Mo.Rev.Stat. § 610.027.2. *See also, Pennington v. Dobbs*, 235 S.W.3d 77, 79 (Mo. Ct.App. 2007) (petitions in cases in which a governmental body refused or failed to respond to a Sunshine Law request need to allege a request for public record, that the custodian of the record received the request and the custodian did not timely respond).

6. Time limit for filing suit.

A suit to enforce the Sunshine Law must be brought within one year from the time the violation is ascertainable and in no event more than two years after the violation. Mo.Rev.Stat. § 610.027.5. *See Bartis v. City of Bridgeton*, 2007 U.S. Dist. Lexis 36550; *Columbo v. Buford*, 93 S.W.2d 690, 695 (Mo.Ct.App. 1996) (“ascertainable” means when the alleged violation could have been discovered or when it was made known).

7. What court.

Suit must be brought in the county in which the public governmental body has its principal place of business. Mo.Rev.Stat. § 610.027.1.

8. Judicial remedies available.

The court may issue a declaratory judgment holding that the public governmental body violated the Sunshine Law, and issue an injunction prohibiting further violations. However, the court may only enter a declaratory judgment in the context of a specific factual matrix and an actual justiciable controversy. See *Fulson v. Kansas City Star Co.*, 816 S.W.2d 297, 299 (Mo.Ct.App. 1991); *Buckner v. Burnett*, 908 S.W.2d 908 (Mo.Ct.App. 1995). In a suit for judicial enforcement of the Sunshine Law in which a public governmental body is determined to have violated the statute, typically a court will enter an injunction compelling compliance both as to past violations (i.e., require that a public record be made available for public inspection) and future violations (i.e., require that similar public meetings or records be open to the public in the future). However, the Missouri Court of Appeals for the Western District has held that the Sunshine Law does not provide a remedy in the nature of an injunction relating to future requests. *Buckner v. Burnett*, *supra* at 911-12. Rather, the Sunshine Law merely provides a remedy for past violations. *Id.* In the event a public governmental body repeats the same violation, that new violation could be deemed a purposeful violation of the Sunshine Law, affording additional relief, including attorneys fees and fines.

Nevertheless, an injunction enjoining the violating party from withholding any of the improperly closed material may be issued; even portions of the material that were properly closed may be ordered open. *Sorkin v. Smith* (Circuit Court, City of St. Louis, No. 984-01519, Nov. 23, 1999).

9. Litigation expenses.

A court may order a public governmental body or its members to pay all costs and reasonable attorney fees to any party successfully establishing a purposeful or knowing violation of the Sunshine Law. Mo.Rev.Stat. § 610.027.3-4.

a. Attorney fees.

If the court finds a knowing violation, it may award costs and attorneys' fees. Mo.Rev.Stat. § 610.027.3. If the court finds a purposeful violation, the court shall award costs and attorneys' fees. Mo.Rev.Stat. § 610.027.4.

b. Court and litigation costs.

See above.

10. Fines.

Where the court finds by a preponderance of the evidence that a member of a public governmental body purposefully violated the Sunshine Law, it may order that member to pay a civil fine in an amount not more than \$5,000. Mo.Rev.Stat. § 610.027.4. Where the court finds by a preponderance of the evidence that a member of a public governmental body knowingly violated the Sunshine Law, it may order that member to pay a civil fine in an amount not more than \$1,000. Mo.Rev.Stat. § 610.027.3. See *The Kansas City Star v. Shields*,

771 S.W.2d 101, 105 (Mo.Ct.App. 1989) (affirmed a fine imposed on a member of city council who failed to leave a meeting of the council's finance committee that violated the Sunshine Law).

11. Other penalties.

In addition to injunctive relief to preclude future violations of the Sunshine Law, under certain circumstances a court may void action taken by the public governmental body. Mo.Rev.Stat. § 610.027.5. First, the court must find by a preponderance of the evidence that the public governmental body violated the Sunshine Law. Second, the court must find under the facts of the particular case that the public interest in the enforcement of the policy of the Sunshine Law outweighs the public interest in sustaining the validity of the action taken in the closed meeting, record, or vote. *Id.* See also *SSM Health Care v. Mo. Health Facilities Review Comm.*, 1994 Mo.App. Lexis 700 at *11-14 (Mo.Ct.App. 1994) (agency vote would not be voided where agency could only reach the same result if there were a new vote); *State ex rel. Page v. Reorganized School District R-VI of Christian County*, 765 S.W.2d 317, 322 (Mo.Ct.App. 1989) (school board violated Sunshine Law, but such violation was not a basis for rendering subsequently enacted ordinance void).

12. Settlement, pros and cons.

Generally, the governmental body is equally interested in obtaining a judicial resolution of the question of access to particular records. Accordingly, settlement is not often pursued.

E. Appealing initial court decisions.

1. Appeal routes.

Appeal is to the Missouri Court of Appeals for the applicable district.

2. Time limits for filing appeals.

The notice of appeal must be filed within thirty days after entry of the judgment or other action by the court that has the practical effect of terminating a party's action in the form they desired to bring it. Mo.R.Civ.P. 81.05(a).

3. Contact of interested amici.

The appearance of *amici* are permitted both in the circuit court and on appeal. Interested *amici* will depend on the nature of the records sought.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

F. Addressing government suits against disclosure.

Mo.Rev.Stat. § 610.027.6 permits a public governmental body that is in doubt about the legality of the disclosure of particular information to bring suit at its own expense in circuit court or to seek an opinion from the Attorney General.

Open Meetings

I. STATUTE -- BASIC APPLICATION.

Missouri law on open meetings is governed by the Open Meetings Act, Mo.Rev.Stat. § 610.010-.030 (“Sunshine Law”), the same statute governing access to public records.

A. Who may attend?

Any member of the public may attend public meetings under the Sunshine Law. Access is not limited to United States, Missouri, or community citizens. *State ex rel. Board of Public Utilities of City of Springfield v. Crow*, 592 S.W.2d 285, 289 (Mo.Ct.App. 1979) (the Sunshine Law confers rights on the general public and not upon any particular segment or representative of the general public).

B. What governments are subject to the law?

Any public governmental body as defined in Mo.Rev.Stat. § 610.010(4) is subject to the Sunshine Law, including state, county, local, or municipal governmental entities.

1. State.

Yes, see Mo.Rev.Stat. § 610.010(4).

2. County.

Yes, see Mo.Rev.Stat. § 610.010(4).

3. Local or municipal.

Yes, see Mo.Rev.Stat. § 610.010(4).

C. What bodies are covered by the law?

1. Executive branch agencies.

a. What officials are covered?

Meetings of any public governmental body as defined in Mo.Rev.Stat. § 610.010(4) must be open to the public. This includes meetings of executive officials. “[A] single member body, [however], cannot have meetings, [but] it can have records.” *MacLachlan v. McNary*, 684 S.W.2d 534, 537 (Mo.Ct.App. 1984).

b. Are certain executive functions covered?

Meetings involving all executive functions must be open to the public if they involve deliberations or decisions that in any way affect the public. *MacLachlan v. McNary*, 684 S.W.2d 534, 538 (Mo.Ct.App. 1984).

c. Are only certain agencies subject to the act?

Administrative agencies are subject to the Sunshine Law. See *Tipton v. Barton*, 747 S.W.2d 325, 329 (Mo.Ct.App. 1988).

2. Legislative bodies.

Legislative bodies are subject to the Sunshine Law. Mo.Rev.Stat. § 610.010(4) (definition of “public governmental body” includes any legislative governmental entity created by the constitution, statutes, order or ordinance).

3. Courts.

The law does not apply to courts in their judicial capacity. See *Remington v. City of Boonville*, 701 S.W.2d 804, 807 (Mo.Ct.App. 1985) (“the legislature totally removed the judiciary from the definition of ‘public governmental body,’ and ipso facto, from the operation of Missouri’s Sunshine Law”). A judicial entity is subject to the open meeting law when it is “operating in an administrative capacity.” Mo.Rev.Stat. § 610.010(4). In addition, Article 1, § 14 of the Missouri Constitution provides that “the courts of justice shall be open to every person.” Mo.Rev.Stat. § 476.170 provides that “the sitting of every court shall

be public and every person may freely attend the same.” The common law right to access to courts applies. *Pulitzer Publishing Co. v. Transit Cas. Co.*, 43 S.W.3d 293, 301 (Mo. banc 2001).

4. Nongovernmental bodies receiving public funds or benefits.

The Sunshine Law by its terms includes only “public governmental bodies” and “quasi-public governmental bodies.” Mo.Rev.Stat. § 610.010(4). Entities that fall outside these definitions are not covered by the Sunshine Law.

5. Nongovernmental groups whose members include governmental officials.

As noted above, the Sunshine Law by its terms includes only “public governmental bodies” and “quasi-public governmental bodies.” Mo.Rev.Stat. § 610.010(4). Entities that fall outside these definitions are not covered by the Sunshine Law.

6. Multi-state or regional bodies.

If a public governmental body participates in a multistate or regional body (such as a planning authority), then the law affords a right of access to those meetings. See Mo.Rev.Stat. § 610.010(4)(g).

7. Advisory boards and commissions, quasi-governmental entities.

Advisory boards and commissions and quasi-governmental entities are expressly governed by the law. Mo.Rev.Stat. § 610.010(4)(a)-(f); *MacLachlan v. McNary*, 684 S.W.2d 534, 538 (Mo.Ct.App. 1984).

8. Other bodies to which governmental or public functions are delegated.

The definition of quasi-public governmental body includes entities that have as their primary purpose to enter into contracts with governmental bodies or engage primarily in activities carried out pursuant to a contract with a governmental body. Mo.Rev.Stat. § 610.010(4)(f)a.

9. Appointed as well as elected bodies.

Appointed as well as elected bodies are governed by the Sunshine Law. Mo.Rev.Stat. § 610.010(4).

D. What constitutes a meeting subject to the law.

1. Number that must be present.

Any meeting of a public governmental body at which any public business is discussed, decided, or public policy formulated is subject to the Sunshine Law. Mo.Rev.Stat. § 610.010(5). There is no number of members of a public governmental body required to be present to constitute a “meeting” of that body. Generally, the presence or absence of a quorum is not controlling. *But see* Op. Att’y Gen. 144 (Conway 1975) (off-the-record pre-hearing conference of Missouri Public Service Commission not subject to Sunshine Law unless a quorum of commissioners is present).

a. Must a minimum number be present to constitute a “meeting”?

Any meeting of a public governmental body at which any public business is discussed, decided, or public policy formulated is subject to the Sunshine Law. Mo.Rev.Stat. § 610.010(5). There is no number of members of a public governmental body required to be present to constitute a “meeting” of that body. Generally, the presence or absence of a quorum is not controlling. *But see* Op. Att’y Gen. 144 (Conway 1975) (off-the-record pre-hearing conference of Missouri Public Service Commission not subject to Sunshine Law unless a quorum of commissioners is present).

b. What effect does absence of a quorum have?

Where the members of a public governmental body are all elected (except for the Missouri General Assembly), all votes taken by roll call shall be cast by members of the body who are physically present and in attendance at the meeting. If the public body has an emergency, and a

quorum of the body are physically present and less than a quorum are participating through electronic means including telephone, Internet, or facsimile, the nature of the emergency justifying departure from the normal requirement of physical presence shall be stated in the minutes and in such an emergency, all votes taken shall be regarded as if all members were physically present. Mo.Rev.Stat. § 610.015.

2. Nature of business subject to the law.

a. “Information gathering” and “fact-finding” sessions.

Any discussion of public business, even “information gathering” and “fact-finding” sessions, are covered by the Sunshine Law. *See MacLachlan v. McNary*, 684 S.W.2d 534 (Mo.Ct.App. 1984) (annexation study commission which considered and recommended changes in the St. Louis County’s makeup and delivery of governmental services is covered by the law).

b. Deliberations toward decisions.

Deliberations toward decisions are covered by the law. Mo.Rev.Stat. § 610.010(5).

3. Electronic meetings.

The definition of public meeting includes meeting conducted by communication equipment. Mo.Rev.Stat. § 610.010(5). The notice for meetings conducted by telephone or other electronic means must include the mode by which the meeting will be conducted and a location where the public can observe and attend. Mo.Rev.Stat. § 610.020.1.

a. Conference calls and video/Internet conferencing.

The law includes meetings “by means of communication equipment” in addition to “corporeal” meetings. Mo.Rev.Stat. § 610.010(5).

b. E-mail.

The definition of public meeting includes meeting conducted by communication equipment. Mo.Rev.Stat. § 610.010(5). The notice for meetings conducted by telephone or other electronic means must include the mode by which the meeting will be conducted and a location where the public can observe and attend. Mo.Rev.Stat. § 610.020.1.

c. Text messages.

The definition of public meeting includes meeting conducted by communication equipment. Mo.Rev.Stat. § 610.010(5). The notice for meetings conducted by telephone or other electronic means must include the mode by which the meeting will be conducted and a location where the public can observe and attend. Mo.Rev.Stat. § 610.020.1.

d. Instant messaging.

The definition of public meeting includes meeting conducted by communication equipment. Mo.Rev.Stat. § 610.010(5). The notice for meetings conducted by telephone or other electronic means must include the mode by which the meeting will be conducted and a location where the public can observe and attend. Mo.Rev.Stat. § 610.020.1.

e. Social media and online discussion boards.

The definition of public meeting includes meeting conducted by communication equipment. Mo.Rev.Stat. § 610.010(5). The notice for meetings conducted by telephone or other electronic means must include the mode by which the meeting will be conducted and a location where the public can observe and attend. Mo.Rev.Stat. § 610.020.1.

E. Categories of meetings subject to the law.

1. Regular meetings.

a. Definition.

A “public meeting” includes “any meeting of a public governmental body . . . at which any public business is discussed, decided” and must be open. Mo.Rev.Stat. §§ 610.010(5), 610.011.2.

b. Notice.

All public governmental bodies must give notice of the time, date, and place of each meeting and its tentative agenda, in a manner reasonably calculated to apprise the public of that information. Mo.Rev.Stat. § 610.020.1. Furthermore, in the event that the meeting is to be conducted by telephone or other electronic means, the notice must specify the mode by which the meeting will be conducted and the designated location where the public may observe and attend the meeting. If a public body plans to meet by Internet chat, Internet message board, or other computer link, it shall post a notice of the meeting on its Web site in addition to its principal office and shall notify the public of how to access that meeting. Mo.Rev.Stat. § 610.020.1.

(1). Time limit for giving notice.

Notice must be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible must be given. Mo.Rev.Stat. § 610.020.2. The twenty-four hour period excludes weekends and holidays when the public facility is closed. Therefore, notice given at 5:00 p.m. on a Friday of a meeting to be held at 8:00 a.m. on Monday is not sufficient if the facility at which the notice is posted is closed over the weekend.

(2). To whom notice is given.

Notice must reasonably apprise the public. Reasonable notice includes making available copies of the notice to any representative of the news media who requests notice of the meetings of a particular government body. Mo.Rev.Stat. § 610.020.1.

(3). Where posted.

Reasonable notice requires posting of notice of meetings of public governmental bodies on a bulletin board or other prominent place that is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting. If the body has no such office, notice is to be posted at the building in which the meeting is to be held. Mo.Rev.Stat. § 610.020.1. If a public body plans to meet by Internet chat, Internet message board, or other computer link, it shall post a notice of the meeting on its Web site in addition to its principal office and shall notify the public of how to access that meeting. Mo.Rev.Stat. § 610.020.1.

(4). Public agenda items required.

Public governmental bodies must give tentative agendas for meetings in their notices of those meetings. Mo.Rev.Stat. § 610.020.1.

(5). Other information required in notice.

In the event that the meeting is to be conducted by telephone or other electronic means, the notice must specify the mode by which the meeting will be conducted and the designated location where the public may observe and attend the meeting. If a public body plans to meet by Internet chat, Internet message board, or other computer link, it shall post a notice of the meeting on its Web site in addition to its principal office and shall notify the public of how to access that meeting. Mo.Rev.Stat. § 610.020.1.

(6). Penalties and remedies for failure to give adequate notice.

Where the court finds by a preponderance of the evidence that a member of a public governmental body *purposefully* violated the Sunshine Law, it may order that member to pay a civil fine in an amount not more than \$5,000. Mo.Rev.Stat. § 610.027.4. Where the court finds by a preponderance of the evidence that a member of a public governmental body *knowingly* violated the Sunshine Law, it may order that member to pay a civil fine in an amount not more than \$1,000. Mo.Rev.Stat. § 610.027.3. *See The Kansas City Star v. Shields*, 771 S.W.2d 101, 105 (Mo.Ct.App. 1989) (affirmed a fine imposed on

a member of city council who failed to leave a meeting of the council's finance committee that violated the Sunshine Law). The court "shall void any action taken in violation of [the law] if the court finds under the facts of the particular case that the public interest in enforcement of the policy of [the law] outweighs the public interest in sustaining the validity of the action taken at the closed meeting." Mo.Rev.Stat. § 610.027.5.

c. Minutes.

(1). Information required.

A journal or minutes of open or closed meetings must be taken and retained by public governmental bodies. Mo.Rev.Stat. § 610.020.7. At a minimum, the minutes must contain the following information:

- a. Date of meeting;
- b. Time of meeting;
- c. Place of meeting;
- d. Members present and absent; and
- e. A record of any votes taken. If a roll call vote is taken, the minutes must attribute each "yea" and "nay" vote — or abstinence if not voting — to individual members of the public governmental body.

(2). Are minutes public record?

Minutes of public meetings of public governmental bodies are public records subject to disclosure.

2. Special or emergency meetings.

a. Definition.

The law contemplates that it may, in certain instances, be necessary to hold a public meeting on less than twenty-four hours notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public. Mo.Rev.Stat. § 610.020.3. Such meetings are permitted for good cause.

b. Notice requirements.

All public governmental bodies must give notice of the time, date, and place of each meeting and its tentative agenda, in a manner reasonably calculated to apprise the public of that information. Mo.Rev.Stat. § 610.020.1.

(1). Time limit for giving notice.

Notice must be given at least twenty-four hours prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible must be given. Mo.Rev.Stat. § 610.020.2 and .3.

(2). To whom notice is given.

Notice must reasonably apprise the public. Reasonable notice includes making available copies of the notice to any representative of the news media who requests notice of the meetings of a particular government body. Mo.Rev.Stat. § 610.020.1.

(3). Where posted.

Reasonable notice requires posting of notice of meetings of public governmental bodies on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting. If the body has no such office, notice is to be posted at the building in which the meeting is to be held. Mo.Rev.Stat. § 610.020.1.

(4). Public agenda items required.

Public governmental bodies must give tentative agendas for meetings in their notices of those meetings. Mo.Rev.Stat. § 610.020.1.

(5). Other information required in notice.

In the event that the meeting is to be conducted by telephone or other electronic means, the notice must specify the mode by which the meeting will be conducted and the designated location where the public may observe and attend the meeting. If a public body plans to meet by Internet chat, Internet message board, or other computer link, it shall post a notice of the meeting on its Web site in addition to its principal office and shall notify the public of how to access that meeting. Mo.Rev.Stat. § 610.020.1.

(6). Penalties and remedies for failure to give adequate notice.

Where the court finds by a preponderance of the evidence that a member of a public governmental body *purposefully* violated the Sunshine Law, it may order that member to pay a civil fine in an amount not more than \$5,000. Mo.Rev.Stat. § 610.027.4. Where the court finds by a preponderance of the evidence that a member of a public governmental body *knowingly* violated the Sunshine Law, it may order that member to pay a civil fine in an amount not more than \$1,000. Mo.Rev.Stat. § 610.027.3. See *The Kansas City Star v. Shields*, 771 S.W.2d 101, 105 (Mo.Ct.App. 1989) (affirmed a fine imposed on a member of city council who failed to leave a meeting of the council's finance committee that violated the Sunshine Law). The court "shall void any action taken in violation of [the law] if the court finds under the facts of the particular case that the public interest in enforcement of the policy of [the law] outweighs the public interest in sustaining the validity of the action taken at the closed meeting." Mo.Rev.Stat. § 610.027.5.

c. Minutes.

(1). Information required.

A journal or minutes of open or closed meetings must be taken and retained by public governmental bodies. Mo.Rev.Stat. § 610.020.6. At a minimum, the minutes must contain the following information:

- a. Date of meeting;
- b. Time of meeting;
- c. Place of meeting;
- d. Members present and absent;
- e. A record of any votes taken. If a roll call vote is taken, the minutes must attribute each "yea" and "nay" vote or abstinence if not voting to individual members of the public governmental body;
- f. the nature of the good cause justifying the departure from the normal requirements shall be stated in the minutes.

(2). Are minutes a public record?

Minutes of public meetings of public governmental bodies are public records subject to disclosure.

3. Closed meetings or executive sessions.

a. Definition.

A "closed meeting" is any meeting closed to the public. Mo.Rev.Stat. § 610.010(1). A meeting or vote may be closed only to the extent necessary for the specific reason announced to justify the closed meeting or vote. No business that does not directly relate to the specifically announced reason for the closed meeting or vote may be discussed. Mo.Rev.Stat. § 610.022.3.

b. Notice requirements.

(1). Time limit for giving notice.

A public governmental body proposing to hold a closed meeting or vote shall comply with the notice requirements for public meetings set forth above. Notice must be given at least twenty-four hours prior

to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible must be given. Mo.Rev.Stat. § 610.020.2 & 3.

(2). To whom notice is given.

Notice must reasonably apprise the public. Reasonable notice includes making available copies of the notice to any representative of the news media who requests notice of the meetings of a particular government body. Mo.Rev.Stat. § 610.020.1.

(3). Where posted.

Reasonable notice requires posting of notice of meetings of public governmental bodies on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting. If the body has no such office, notice is to be posted at the building in which the meeting is to be held. Mo.Rev.Stat. § 610.020.1.

(4). Public agenda items required.

Public governmental bodies must give tentative agendas for meetings in their notices of those meetings. Mo.Rev.Stat. § 610.020.1.

(5). Other information required in notice.

A public governmental body proposing to hold a closing meeting must give notice of the time, date and place of such closed meeting and the reason for holding it by reference to a specific exception in the Sunshine Law authorizing closure. Mo.Rev.Stat. § 610.022.2.

(6). Penalties and remedies for failure to give adequate notice.

Where the court finds by a preponderance of the evidence that a member of a public governmental body *purposefully* violated the Sunshine Law, it may order that member to pay a civil fine in an amount not more than \$5,000. Mo.Rev.Stat. § 610.027.4. Where the court finds by a preponderance of the evidence that a member of a public governmental body *knowingly* violated the Sunshine Law, it may order that member to pay a civil fine in an amount not more than \$1,000. Mo.Rev.Stat. § 610.027.3. See *The Kansas City Star v. Shields*, 771 S.W.2d 101, 105 (Mo.Ct.App. 1989) (affirmed a fine imposed on a member of city council who failed to leave a meeting of the council's finance committee that violated the Sunshine Law). The court shall void any action taken in violation of [the law] if the court finds under the facts of the particular case that the public interest in enforcement of the policy of [the law] outweighs the public interest in sustaining the validity of the action taken at the closed meeting." Mo.Rev.Stat. § 610.027.5.

c. Minutes.

(1). Information required.

Minutes are required for both open and closed meetings. Mo.Rev.Stat. § 610.020.7.

(2). Are minutes a public record?

The vote of each member on the question of closing the meeting and on the specific reason for closing the meeting must be announced publicly at an open meeting and entered into the minutes of the open meeting. This information is public. Mo.Rev.Stat. § 610.022.1.

d. Requirement to meet in public before closing meeting.

There must be a public meeting on the decision to close a public meeting. Mo.Rev.Stat. § 610.022.1.

e. Requirement to state statutory authority for closing meetings before closure.

The specific statutory reason for closing the meeting must be stated by reference to the statute. Mo.Rev.Stat. § 610.022.1.

f. Tape recording requirements.

There is no requirement to record a closed meeting. Closed meetings may not be electronically recorded without permission of the public body holding the meeting. Mo.Rev.Stat. § 610.020.3.

F. Recording/broadcast of meetings.

1. Sound recordings allowed.

A public body shall allow for the recording by audiotape, videotape, or other electronic means of any open meeting. A public body may establish guidelines regarding the manner in which such recording is conducted so as to minimize disruption. Recording of a closed meeting may only occur with permission of the public body; violation of this provision is a Class C misdemeanor. Mo.Rev.Stat. § 610.020.3.

2. Photographic recordings allowed.

See above.

G. Are there sanctions for noncompliance?

Where the court finds by a preponderance of the evidence that a member of a public governmental body *purposefully* violated the Sunshine Law, it may order that member to pay a civil fine in an amount not more than \$5,000. Mo.Rev.Stat. § 610.027.4. Where the court finds by a preponderance of the evidence that a member of a public governmental body *knowingly* violated the Sunshine Law, it may order that member to pay a civil fine in an amount not more than \$1,000. Mo.Rev.Stat. § 610.027.3. See *The Kansas City Star v. Shields*, 771 S.W.2d 101, 105 (Mo.Ct.App. 1989) (affirmed a fine imposed on a member of city council who failed to leave a meeting of the council's finance committee that violated the Sunshine Law). The court "shall void any action taken in violation of [the law] if the court finds under the facts of the particular case that the public interest in enforcement of the policy of [the law] outweighs the public interest in sustaining the validity of the action taken at the closed meeting." Mo.Rev.Stat. § 610.027.5.

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open meetings statute.

1. Character of exemptions.

a. General or specific.

The exemptions enumerated in the Sunshine Law are specific rather than general. Mo.Rev.Stat. § 610.021.

b. Mandatory or discretionary closure.

Closed meetings are generally discretionary. Mo.Rev.Stat. § 610.022.4. ("nothing in sections 610.010 to 610.028 shall be construed to require a public governmental body to hold a closed meeting, record, or vote.")

2. Description of each exemption.

The Sunshine Law exemptions apply to both records and meetings.

a. Litigation. Mo.Rev.Stat. § 610.021(l).

Scope. The so-called "litigation" exception encompasses more than litigation.

- records relating to legal actions, causes of action, or litigation involving a public governmental body; and
- confidential or privileged communications between a public governmental body or its representatives and its attorneys; and
- legal work product. See *Librach v. Cooper*, 778 S.W.2d 351, 353-354 (Mo.Ct.App. 1989) (held settlement agreement between board of education and superintendent of school district was not a confidential or privileged communication between a public governmental body and its attorneys); but see *Calvert v. Mehlville R-IX Sch. Dist.*, 44

S.W.3d 455 (Mo.Ct.App. 2001) (holding that school board must acknowledge existence of settlement agreement in response to a request, but pursuant to confidentiality clause in the agreement could refuse to disclose its contents); *State ex rel. Moore v. Brewster*, 116 S.W.3d 630 (Mo.Ct.App. 2003) (holding that letter from school board attorney concerning investigation of board members was legal work product and the trial court erred in finding that the board president violated the Sunshine Law by refusing to release a copy of the letter to the board members under investigation).

Mere reference to litigation is not sufficient to trigger this exception. See *Tipton v. Barton*, 747 S.W.2d 325, 330 (Mo. Ct.App. 1988)(litigation exception applies to analytical work product, but not to general descriptions of legal services rendered appearing on city attorneys' itemized monthly billing statements).

Exception Removed Upon Final Disposition of Litigation. Any minutes, vote or settlement agreement relating to legal actions, causes of action, or litigation involving a public governmental body or any agent or entity representing the public body's interests or acting as its insured, shall be made public upon final disposition of the matter voted upon, or upon the signing by the parties of the settlement agreement, unless prior to final disposition, the settlement agreement is ordered closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy considerations enumerated in § 610.011. However, the amount of any monies paid by, or on behalf of, the public governmental body shall be disclosed. Mo.Rev.Stat. § 610.021(1), modifying the holding in *Tuft v. City of St. Louis*, 936 S.W.2d 113, 119 (Mo.Ct.App. 1996). Also, a public or quasi-public official does not have the same right of privacy as an ordinary citizen, and so cannot rely on such a right to oppose a request to unseal court records relating to the official's compensation. *Pulitzer Publishing Co. v. Transit Casualty Co.*, 43 S.W.3d 293 (Mo. banc 2001) (in the context of a special deputy receiver appointed to oversee the liquidation of an insurance company).

Eminent Domain/Condemnation. When a public governmental body undertakes to exercise the power of eminent domain, the vote must be made public immediately following the action on the motion to authorize institution of a condemnation action. Mo.Rev.Stat. § 610.021(1).

b. *Real Estate.* Mo.Rev.Stat. § 610.021(2).

Scope. Government meetings and records relating to the leasing, purchase or sale of real estate by a public governmental body may be closed. *Id.* Such records, including minutes of closed meetings, may be closed even if no actual lease, purchase or sale of real estate results. See *State ex rel. Birk v. City of Jackson*, 907 S.W.2d 181, 187 (Mo.Ct.App. 1995).

Exception Removed Upon Completion of Transaction. Minutes of closed meetings, votes or other public records approving the contract relating to the leasing, purchase or sale of real estate by a public governmental body must be made public upon execution of the lease, purchase or sale of the real estate. See *State ex rel. Birk v. City of Jackson*, 907 S.W.2d 181, 187 (Mo.Ct.App. 1995) (holding that city properly closed minutes of closed council meetings were agreements to operate city-owned landfill were discussed with independent contractors until agreement was approved).

c. *Employment.* Mo.Rev.Stat. § 610.021(3).

Scope. Government meetings and records relating to certain individual personnel decisions may be closed, provided personal information about the employee is discussed or recorded:

- hiring of an employee of a public governmental body, and
- firing of an employee of a public governmental body, and

- disciplining an employee of a public governmental body, and
- promoting an employee of a public governmental body.

Personal Information About the Employee. The above records may be closed only if personal information about the employee is discussed or recorded. "Personal" information is defined to include information relating to the performance or merit of individual employees.

When Information May be Made Public. Any vote on a final decision made by a public governmental body, to hire, fire, promote or discipline one of its employees must be made available to the public within 72 hours of the close of the meeting where such action occurs, provided, however, that the affected employee is entitled to prompt notice before such decision is made available to the public.

d. *State Militia or National Guard.* Mo.Rev.Stat. § 610.021(4). Meetings and records relating to the state militia or National Guard may be closed. There are no reported decisions relating to this exception. It is apparent that any such meeting or record, even if it does not pertain to security matters, falls within this exception.

e. *Non-Judicial Mental Health or Physical Health Proceedings.* Mo.Rev.Stat. § 610.021(5). Meetings and records relating to non-judicial mental or physical health proceedings involving identifiable persons, including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment may be closed.

f. *Scholastic Records.* Mo.Rev.Stat. § 610.021(6). Government meetings and records relating to scholastic probation, expulsion or graduation of identifiable individuals, including records of individual test or examination scores, may be closed.

g. *Welfare.* Mo.Rev.Stat. § 610.021(8). Government meetings and records relating to welfare cases of identifiable individuals may be closed.

h. *Public Employee Negotiations.* Mo.Rev.Stat. § 610.021(9). Government meetings and records relating to preparation, including any discussions or work product, on behalf of a public governmental body or its representatives for negotiations with employee groups may be closed. See *State ex rel. Board of Public Utilities v. Crow*, 592 S.W.2d 285 (Mo.Ct.App. 1979)(collective bargaining sessions of city board of public utilities not required to be open to the public).

i. *Specifications for Competitive Bidding.* Mo.Rev.Stat. § 610.021(11). Specifications for competitive bidding, until either the specifications are officially approved by the public governmental body or the specifications are published for bid may be closed. See *Hanten v. School Dist. of Riverview Gardens*, 183 F.3d 799, 810-811 (conclusion that school board members meeting privately did not intend to violate the Sunshine Law was supported by § 611.021(11) of the Sunshine Law, which permitted them to meet in closed session to discuss bid specifications).

j. *Anti-terrorism Records.* Operational guidelines and policies developed, adopted or maintained by any public agency responsible for law enforcement, public safety, first response, or public health for use in responding to "any critical incident which is or appears to be terrorist in nature and has the potential to endanger individual public safety or health. This exception does not close information relating to contracts and expenditures made in implementing these guidelines and policies. An agency seeking to use this exception must state in writing that disclosure would impair its ability to protect health or safety of persons and must further state in writing that the public interest in nondisclosure

outweighs the public interest in disclosure. This provision sunsets on December 31, 2008.” Mo.Rev.Stat. § 610.021(18).

Records relating to existing or proposed security systems and structural plans or real property owned or released by a public governmental body may be a closed record, however, records related to the procurement of security systems purchased with public funds shall be open. This provision also sunsets on December 31, 2008. Mo.Rev.Stat. § 610.021(19).

k. *Computer System Information.* Records identifying the configuration of components or the operation of a computer, computer system, computer or telecommunications network of a public governmental body that would allow unauthorized access to or disruption of same may be closed; however, procurement information, including moneys paid, shall be open, and this provision cannot be used to limit or deny access to public records in a file or database. Mo.Rev.Stat. § 610.021(20).

B. Any other statutory requirements for closed or open meetings.

Other statutory requirements for closed meetings are based on the type of information or records discussed. If a statute exempts from disclosure a particular type of record, it may also require a meeting or portion of a meeting where that record would be discussed to be closed.

“Records which are protected from disclosure by law” may be closed. Mo.Rev.Stat. § 610.021(14). See *Oregon County R-IV School District v. Le Mon*, 739 S.W.2d 553, 557 (Mo.Ct.App. 1987) (language in the Sunshine Law “except as otherwise provided by law” means except as otherwise provided by statute); *Pulitzer Publishing Company v. Missouri State Employees’ Retirement System*, 927 S.W.2d 477, 480 (Mo.Ct.App. 1996) (a regulation promulgated pursuant to an agency’s general rule making authority is not within the “except as otherwise provided by law” exception to the Sunshine Law); *Missouri Protection and Advocacy Services v. Allan*, 787 S.W.2d 291, 292 (Mo.Ct.App. 1990) (a record exempt from the federal Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq., is not exempt from the Missouri Sunshine Law unless a specific state statute expressly so provides).

C. Court mandated opening, closing.

The courts have not created judicial exceptions to the open meetings law.

III. MEETING CATEGORIES -- OPEN OR CLOSED.

A. Adjudications by administrative bodies.

Proceedings before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after hearing are called “contested cases” under the Missouri Administrative Procedure Act, Mo.Rev.Stat. § 536.010(2). Hearings and evidence in contested cases are generally open to the public unless one of the enumerated exceptions in the Sunshine Law apply. The Sunshine Law does not apply to any disciplinary proceedings involving professional licenses brought before the Administrative Hearing Commission or otherwise conducted by any professional licensing agency. *Christiansen v. State Board of Accountancy*, 764 S.W.2d 943, 951 (Mo.Ct.App. 1988). The notice requirements for contested cases are set forth in Mo.Rev. Stat. § 536.067.

1. Deliberations closed, but not fact-finding.

There is no specific provision on this.

2. Only certain adjudications closed, i.e. under certain statutes.

There is no specific provision on this.

B. Budget sessions.

Meetings of a public governmental body to discuss its budget must be open to the public. Budget sessions generally do not fall within an

exception to the Sunshine Law. See also *The Kansas City Star v. Shields*, 771 S.W.2d 101, 102 (Mo.Ct.App. 1989) (holding that informal meeting of finance committee of city council, in which budget proposal was discussed, violated the Sunshine Law); *Hudson v. School District of Kansas City*, 578 S.W.2d 301, 308 (Mo.Ct.App. 1979) (holding that meeting of school district to discuss furlough of several hundred teachers and administrative employees in order to solve \$7.3 million budget deficit should have been open to the public under the Sunshine Law).

C. Business and industry relations.

Meetings in which business and industry relations are discussed by a public governmental body must be open to the public unless a particular exception in the Sunshine Law applies. For example, specifications for competitive bidding, sealed bids and related documents may be closed. Mo.Rev.Stat. §§ 610.02 1 (11) & (12).

D. Federal programs.

Meetings in which participation in federal programs is discussed by a public governmental body must be open to the public.

E. Financial data of public bodies.

Financial data and meetings to discuss financial data of public governmental bodies must be open to the public.

F. Financial data, trade secrets or proprietary data of private corporations and individuals.

Meetings relating to scientific and technological innovations in which the owner has a proprietary interest are closed. Mo.Rev.Stat. § 610.021(15). Corporate and financial information of private corporations and individuals are closed by a variety of statutes:

Any documents acquired by the State Veterinarian that reveal the financial condition of a licensee are confidential. Mo.Rev.Stat. § 277.120.

Tax returns and Department of Revenue reports, containing information received by the Department of Revenue in connection with the administration of tax laws are made confidential by Mo.Rev.Stat. § 32.057.1, and can only be disclosed under certain circumstances enumerated in § 32.057.2.

Generally, corporate information obtained by the Secretary of State or the Supervisor of Corporation Registration is required to keep confidential information obtained during the course of examining the books and records of any corporation. Mo.Rev.Stat. § 351.665.

Information obtained from financial institutions (banks, trust companies, small loan businesses) by the Missouri Director of Finance in the course of examinations is generally deemed confidential. Confidential information includes information relating to private accounts, affairs and transactions, and financial information of assets and liabilities. Mo.Rev.Stat. § 361.080.

The books and records of Savings and Loan Associations pertaining to accounts and loans of account holders, borrowers, and stockholders are to be held confidential by the Director of the Division of Finance, examiners, and other State representatives pursuant to Mo.Rev.Stat. § 369.099.

Information obtained from savings and loan associations obtained by examiners of the Division of Finance and Examiners is generally confidential. Mo.Rev.Stat. § 409.830.

Generally, all information retained by the Missouri Commissioner of Securities is public information and must be available for examination by the public. Mo.Rev.Stat. § 409.83. However, information obtained in the course of private investigations by the Commissioner of Securities may be closed to the public. *Id.*

Records submitted to the Missouri Department of Economic Development, the Missouri Economic Development, Export and Infrastructure Board, or to a Regional Planning Commission relating to

financial investments in a business, sales projections or other business plan information, are closed under Mo.Rev.Stat. § 620.014. Records relating to tax credits are also closed, except for the identities of the businesses receiving tax credits and the amount of tax credits awarded. *Id.* See *Christiansen v. State Board of Accountancy*, 764 S.W.2d 943, 951 (Mo.Ct.App. 1988) (held Sunshine Law does not apply to CPA's request for records of professional licensing board relating to disciplinary action against him).

Risk Based Capital (RBC) Reports are comprehensive financial plans that insurance companies are required to submit annually to the National Association of Insurance Commissioners (NAIC) and Missouri Department of Insurance (on or before March 15). RBC Reports are confidential pursuant to Mo.Rev.Stat. § 375.1267.

The Missouri Department of Natural Resources requires that any owner or operator of an underground storage tank furnish the Department with information relating to the tanks. Mo.Rev.Stat. § 319.117. Generally, records containing that information are to be made available to the public. *Id.* However, if a person demonstrates to the Department that public disclosure of such records would divulge commercial or financial information entitled to protection under state law, the Department will deem the records confidential. *Id.*

Information submitted to the Land Reclamation Commission in connection with permits for coal exploration may be withheld from the public if it constitutes trade secrets or privileged commercial or financial information. Mo.Rev.Stat. § 444.845.2.

Mo.Rev.Stat. § 198.032 provides that medical, social, personal, or financial records of any nursing home resident is confidential, only to be released upon a court order, or to certain enumerated agencies, law enforcement officials, or the person to whom the records pertain.

G. Gifts, trusts and honorary degrees.

Meetings of public governmental bodies to discuss granting or receiving gifts, trusts and honorary degrees should be public.

H. Grand jury testimony by public employees.

If grand jury proceedings are closed, grand jury testimony by public employees is also closed.

I. Licensing examinations.

Testing and examination materials, before the test or examination is given or, if it is to be given again, before so given again, may be closed. Mo.Rev.Stat. § 610.021(7).

J. Litigation; pending litigation or other attorney-client privileges.

The so-called "litigation" exception, Mo.Rev.Stat. § 610.021(1), encompasses more than litigation. The following information is considered closed:

- records relating to legal actions, causes of action, or litigation involving a public governmental body; and
- confidential or privileged communications between a public governmental body or its representatives and its attorneys; and
- legal work product. See *Librach v. Cooper*, 778 S.W.2d 351, 353-354 (Mo.Ct.App. 1989) (held settlement agreement between board of education and superintendent of school district was not a confidential or privileged communication between a public governmental body and its attorneys).

Mere reference to litigation is not sufficient to trigger this exception. See *Tipton v. Barton*, 747 S.W.2d 325, 330 (Mo.Ct.App. 1988) (litigation exception applies to analytical work product, but not to general descriptions of legal services rendered appearing on city attorney's itemized monthly billing statements). After final disposition of a litigation matter, any vote relating to that litigation involving a public governmental body must be made public. Mo.Rev.Stat. § 610.021(1).

Upon final disposition of litigation involving a public governmental body, the body must make public its minutes of closed meetings and its votes. Other confidential or privileged communications and legal work product may remain closed. Mo.Rev.Stat. § 610.021(l).

When a public governmental body is undertaking to exercise the power of eminent domain, the vote must be made public immediately following the action on the motion to authorize institution of a condemnation action. *Id.*

K. Negotiations and collective bargaining of public employees.

Government records relating to preparation, including any discussions or work product, on behalf of a public governmental body or its representatives for negotiations with employee groups may be closed. Mo.Rev.Stat. § 610.021(9). See *State ex rel. Board of Public Utilities v. Crow*, 592 S.W.2d 285 (Mo.Ct.App. 1979) (collective bargaining sessions of city board of public utilities not required to be open to the public).

1. Any sessions regarding collective bargaining.

State ex rel. Board of Public Utilities v. Crow, 592 S.W.2d 285 (Mo.Ct.App. 1979) (collective bargaining sessions of city board of public utilities not required to be open to the public).

L. Parole board meetings, or meetings involving parole board decisions.

Any meeting, record, or vote, of proceedings involving probation, parole, or pardon may be a closed meeting, closed record, or closed vote. Mo.Rev.Stat. § 217.670.5.

M. Patients; discussions on individual patients.

Meetings of a public governmental body to discuss individual patients may be closed pursuant to Mo.Rev.Stat. § 610.021(5).

N. Personnel matters.

Government meetings relating to certain individual personnel decisions may be closed, provided personal information about the employee is discussed or recorded:

- hiring of an employee of a public governmental body, and
- firing of an employee of a public governmental body, and
- disciplining an employee of a public governmental body, and
- promoting an employee of a public governmental body.

The above meetings may be closed only if personal information about the employee is discussed or recorded. "Personal" information is defined to include information relating to the performance or merit of individual employees.

Any vote on a final decision made by a public governmental body, to hire, fire, promote or discipline one of its employees shall be made available to the public within 72 hours of the close of the meeting where such action occurs, provided, however, that the affected employee is entitled to prompt notice of the decision before such decision is made available to the public. See *Wolfskill v. Henderson*, 823 S.W.2d 112, 114 (Mo.Ct.App. 1991) (holding that police department internal investigative reports not subject to disclosure under the Sunshine Law); *Paskon v. Salem Memorial Hospital District*, 806 S.W.2d 417, 423-424 (Mo.Ct.App. 1991) (holding that board of directors of hospital district could conduct closed meeting to discuss suspension of physician's hospital staff privileges); *Librach v. Cooper*, 778 S.W.2d 351 (Mo.Ct.App. 1989) (holding that records reflecting severance pay paid to former superintendent of public school district are public records subject to disclosure under the Sunshine Law); *Tipton v. Barton*, 747 S.W.2d 325, 331 (Mo.Ct.App. 1988) (mere identification of personnel matters within a description of legal services rendered on a city attorney's itemized monthly billing statement is not sufficient to place the

statement within the employment exception); *Hudson v. School District of Kansas City*, 578 S.W.2d 301, 309 (Mo.Ct.App. 1979) (meeting in which school board decided to furlough several hundred probationary teachers and reassign a large number of administrative employees did not fall within the employment exception because the impelling motivation was financial. The Board was attempting to solve a huge budget deficit. The individual employees affected were not discussed); *Wilson v. McNeal*, 575 S.W.2d 802, 806 (Mo.Ct.App. 1978) (police department report on investigation into death of man in police custody could be closed record under the employment exception because the investigation could have led to disciplining of employees).

1. Interviews for public employment.

Meetings relating to hiring, firing or disciplining employees of public governmental bodies can be closed when information relating to the performance or merit of the individual employee is discussed. Mo.Rev.Stat. § 610.021(3).

2. Disciplinary matters, performance or ethics of public employees.

Meetings relating to hiring, firing or disciplining employees of public governmental bodies can be closed when information relating to the performance or merit of the individual employee is discussed. Mo.Rev.Stat. § 610.021(3).

3. Dismissal; considering dismissal of public employees.

Meetings relating to hiring, firing or disciplining employees of public governmental bodies can be closed when information relating to the performance or merit of the individual employee is discussed. Mo.Rev.Stat. § 610.021(3).

O. Real estate negotiations.

Government records relating to the leasing, purchase or sale of real estate by a public governmental body may be closed. Mo.Rev.Stat. § 610.021(2). Such records, including minutes of closed meetings, may be closed even if no actual lease, purchase or sale of real estate results. See *State ex rel Birk v. City of Jackson*, 907 S.W.2d 181, 187 (Mo. Ct.App. 1995).

Before a “real estate” record may be closed, the public governmental body must first find that public knowledge of the transaction might adversely affect the legal consideration for that real estate. § 610.021(2); *State ex rel. Birk v. City of Jackson, supra*.

Minutes of closed meetings, votes or other public records approving the contract relating to the leasing, purchase or sale of real estate by a public governmental body must be made public upon execution of the lease, purchase or sale of the real estate. See *State ex rel. Birk v. City of Jackson*, 907 SW.2d 181, 187 (Mo.Ct.App. 1995) (holding that city properly closed minutes of closed council meetings held to discuss agreement with independent contractors to operate landfill owned by city until agreement was approved); *City of St. Louis v. City of Bridgeton*, 806 S.W.2d 717, 719 (Mo.Ct.App. 1991) (holding that the meaning of the term “transaction” in the real estate exception is broad enough to encompass multi-lot bulk real estate acquisition or buyout program by public governmental body, and contracts on individual lots need not be available for public inspection until buyout program is complete and knowledge of purchase prices on individual lots would not adversely affect subsequent contracts); *Tipton v. Barton*, 747 S.W.2d 325, 331 (Mo.Ct.App. 1988) (holding that mere reference in a public record to a real estate transaction is not sufficient to trigger application of the real estate exception; the exception applies only where the actual terms of any real estate transaction or a negotiating position of the public governmental body is reflected in the record).

P. Security, national and/or state, of buildings, personnel or other.

Operational guidelines and policies developed, adopted or maintained by any public agency responsible for law enforcement, public

safety, first response, or public health for use in responding to “any critical incident which is or appears to be terrorist in nature and has the potential to endanger individual public safety or health. This exception does not close information relating to contracts and expenditures made in implementing these guidelines and policies. An agency seeking to use this exception must state in writing that disclosure would impair its ability to protect health or safety of persons and must further state in writing that the public interest in nondisclosure outweighs the public interest in disclosure. This provision sunsets on December 31, 2008.” Mo.Rev.Stat. § 610.021(18).

Records relating to existing or proposed security systems and structural plans or real property owned or released by a public governmental body may be a closed record, however, records related to the procurement of security systems purchased with public funds shall be open. This provision also sunsets on December 31, 2008. Mo.Rev. Stat. § 610.021(19).

Q. Students; discussions on individual students.

Personally identifiable student records maintained by public schools are excluded from the definition of public record and therefore not open to the general public. If a student is younger than 18 years old, such records are open for inspection only to that student’s parents, guardian or other custodian. Mo.Rev.Stat. § 610.021(6). If a student is 18 years or older, such records are also open for inspection to that student. *Id.* Federal law provides similar rights and imposes similar restrictions.

IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

A. When to challenge.

1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?

The law does not specifically provide for an expedited hearing. The law does permit injunctive relief and the general Missouri procedures for handling temporary restraining orders provides for expedited hearings.

2. When barred from attending.

If a person is barred from attending a meeting of a governmental body, the body should be requested to state on the record the statutory reason for closing the meeting and the vote on the closure must be held at a public meeting.

3. To set aside decision.

Where a court finds by a preponderance of the evidence that a public governmental body has violated the Sunshine Law and that, under the facts of a particular case, the public interest in enforcement of the Sunshine Law outweighs the public interest in sustaining the validity of any action taken in a closed meeting, record or vote, the court is to void the action. Mo.Rev.Stat. § 610.027.5. See *SSM Health Care v. Mo. Health Facilities Review Committee*, 1994 Mo.App. LEXIS 700 (Mo.Ct.App. April 26, 1994) (holding that agency vote would not be voided where agency could only reach the same result if there were a new vote); *State ex rel. Page v. Reorganized School District R- VI of Christian County*, 765 S.W.2d 317, 322 (Mo.Ct.App. 1989) (held that school board violated Sunshine Law when it conducted meetings between committee and two lowest bidders on construction project, but that board’s award of contract to second lowest bidder would not be voided); *Hawkins v. City of Fayette*, 604 S.W.2d 716, 723-725 (Mo.Ct.App. 1980) (holding that special meeting of board of aldermen called by mayor to discuss his additional compensation without notice to public violated Sunshine Law, but was not basis for rendering ordinance subsequently enacted void).

4. For ruling on future meetings.

The court may rule on the closure of future meetings provided that the dispute satisfies the requirement of a justiciable controversy. If the closure is capable of repetition, this requirement will be satisfied.

5. Other.

There are no other provisions.

B. How to start.

1. Where to ask for ruling.

Rulings are made by the circuit court for the county in which the governmental body has its principal place of business. Mo.Rev.Stat. § 610.027.1.

a. Administrative forum.

(1). Agency procedure for challenge.

There is no agency procedure for challenging a closed meeting. Informal requests to higher levels within the agency are not required before instituting a judicial challenge, but such informal requests may sometimes be successful.

(2). Commission or independent agency.

Less formal governmental bodies are often not aware that the Sunshine Law applies to their meetings or of the procedures to follow. Often, an informal, non-confrontational, approach may be effective.

b. State attorney general.

The state attorney general will issue advisory opinions at the request of the governmental body. The attorney general does not generally initiate independent actions — although authorized to do so — against a governmental body, but has joined as an *amicus* in certain situations. Mo.Rev.Stat. § 610.027.1

c. Court.

The Sunshine Law specifically allows for a court challenge. Mo.Rev. Stat. §§ 610.027 and 610.030.

2. Applicable time limits.

Suits for enforcement of the Sunshine Law must be brought within one year from the date the violation is ascertainable. Mo.Rev.Stat. § 610.027.4. Regardless of the date on which the violation became ascertainable, suit must be brought within two years of the violation. *Id.*

3. Contents of request for ruling.

No formal requirement.

4. How long should you wait for a response?

Because there is no formal administrative procedure, you should allow sufficient time to obtain relief in court and not depend on the administrative process.

5. Are subsequent or concurrent measures (formal or informal) available?

Court action is the only specific relief authorized by the Sunshine Law.

C. Court review of administrative decision.

1. Who may sue?

Any aggrieved person, taxpayer, or citizen of Missouri, the Attorney General or prosecuting attorney may seek judicial enforcement of the requirements of the Sunshine Law. Mo.Rev.Stat. § 610.027.1.

2. Will the court give priority to the pleading?

The Sunshine Law does not require that access cases be given priority on court dockets. However, most such cases under the Sunshine Law request injunctive relief. Frequently, motions for preliminary injunctions are heard on an expedited basis. Once a hearing is set on a motion for preliminary injunction, a request to consolidate the hearing on the merits with the hearing on the motion for preliminary injunction is often granted.

3. Pro se possibility, advisability.

Pro se actions to enforce the Sunshine Law are not prohibited. However, in light of the highly technical arguments frequently advanced in support of and in opposition to disclosure, advice and participation of counsel is recommended.

4. What issues will the court address?

The court will consider the reasons for the closed meeting and, in certain instances, future meetings. The Sunshine Law authorizes a public governmental body which is in doubt about the legality of closing a particular meeting, record, or vote to bring a suit at its own expense in the circuit court of the county of its principal place of business to ascertain the propriety of any such action. Mo.Rev.Stat. § 610.027.5. The public governmental body may also seek a formal opinion of the attorney general. *Id.* A court will not provide declaratory relief unless there is an actual meeting, record or vote at issue. *See Fulson v. Kansas City Star Company*, 816 S.W.2d 297, 299 (Mo.Ct.App. 1991) (denied declaratory relief sought by board of directors of school district and newspaper because questions were abstract, and did not relate to particular meetings, records, or votes of the school district).

a. Open the meeting.

Courts can open meetings.

b. Invalidate the decision.

A court shall invalidate any action taken in violation of sections 610.010 to 610.026, if the court finds the public interest in enforcement of the Sunshine Law outweighs the public interest in sustaining the action taken. Mo.Rev.Stat. § 610.027.5.

c. Order future meetings open.

Courts can order future meetings open.

5. Pleading format.

An action under the Sunshine Law does not have any particular pleading requirements different from any other civil action.

6. Time limit for filing suit.

A suit to enforce the Sunshine Law must be brought within one year from the time the violation is ascertainable. Mo.Rev.Stat. § 610.027.4. Regardless of the date on which the violation became ascertainable, suit must be brought within two years of the violation. *Id.*

7. What court.

Suit must be brought in the county in which the public governmental body has its principal place of business. Mo.Rev.Stat. § 610.027.1.

8. Judicial remedies available.

The court may issue a declaratory judgment holding that the public governmental body violated the Sunshine Law, and issue an injunction prohibiting further violations. However, the court may only enter a declaratory judgment in the context of a specific factual matrix and actual justiciable controversy. *See Fulson v. Kansas City Star Co.*, 816 S.W.2d 297, 299 (Mo.Ct.App. 1991); *Buckner v. Burnett*, 908 S.W.2d 908 (Mo.Ct.App. 1995). Typically in a suit for judicial enforcement of the Sunshine Law in which a public governmental body is determined to have violated the statute, a court will enter an injunction compelling compliance both as to past violations (i.e., require that a public record be made available for public inspection) and future violations (i.e., require that similar public meetings or records be open to the public in the future). However, the Missouri Court of Appeals for the Western District has held that the Sunshine Law does not provide a remedy in the nature of an injunction relating to future requests. *Buckner v. Burnett, supra*. Rather, the Sunshine Law merely provides a remedy for past violations. *Id.* In the event a public governmental body repeats the same violation, that new violation could be deemed a purposeful violation of the Sunshine Law, affording the additional relief, includ-

ing attorneys fees and fines which are discussed below. *Id.*

9. Availability of court costs and attorneys' fees.

A court may order a public governmental body or its members to pay all costs and reasonable attorney fees to any party successfully establishing a purposeful or knowing violation of the Sunshine Law. Mo.Rev.Stat. § 610.027.3-4.

10. Fines.

Where the court finds by a preponderance of the evidence that a member of a public governmental body *purposefully* violated the Sunshine Law, it may order that member to pay a civil fine in an amount not more than \$5,000. Mo.Rev.Stat. § 610.027.4. Where the court finds by a preponderance of the evidence that a member of a public governmental body *knowingly* violated the Sunshine Law, it may order that member to pay a civil fine in an amount not more than \$1,000. Mo.Rev.Stat. § 610.027.3. See *The Kansas City Star v. Shields*, 771 S.W.2d 101, 105 (Mo.Ct.App. 1989) (affirmed a fine imposed on a member of city council who failed to leave a meeting of the council's finance committee that violated the Sunshine Law). The court "shall void any action taken in violation of [the law] if the court finds under the facts of the particular case that the public interest in enforcement of the policy of [the law] outweighs the public interest in sustaining the validity of the of the action taken at the closed meeting." Mo.Rev. Stat. § 610.027.5.

11. Other penalties.

In addition to injunctive relief to preclude future violations of the Sunshine Law, under certain circumstances a court may void an action taken by the public governmental body. Mo.Rev.Stat. § 610.027.5. First, the court must find by a preponderance of the evidence that the public governmental body violated the Sunshine Law. Second, the court must find under the facts of the particular case that the public interest in the enforcement of the policy of the Sunshine Law outweighs the public interest in sustaining the validity of the action taken in the closed meeting, record, or vote. *Id.*

D. Appealing initial court decisions.

1. Appeal routes.

Appeal is to the Missouri Court of Appeals for the applicable district.

2. Time limits for filing appeals.

The notice of appeal must be filed within ten days after the judgment becomes final, which occurs thirty days after the judgment is entered. Mo.R.Civ.P. 81.05(a). Missouri law, however, provides for an accelerated route to the Court of Appeals through an application for a writ of prohibition where irreparable harm would result from waiting for the full appeals process to commence. In extreme cases, the Court of Appeals may dispense with formal time limits for filing of a reply to the writ application altogether.

3. Contact of interested amici.

The appearance of *amici* are permitted both in the circuit court and on appeal. Interested *amici* will depend on the nature of the records sought. The Missouri Attorney General has appeared as *amici* in appropriate cases. If the decision of the court is directly contrary to a formal opinion of the attorney general or the attorney general's handbook on open meetings and records, the attorney general may enter an appearance to support his interpretation of the statute.

The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state's highest court.

V. ASSERTING A RIGHT TO COMMENT.

There is no right to comment under Missouri law.

A. Is there a right to participate in public meetings?

There is no such right in the Sunshine Law.

B. Must a commenter give notice of intentions to comment?

There is no provision on this.

C. Can a public body limit comment?

Typically, yes. There is no Sunshine Law provision on this.

D. How can a participant assert rights to comment?

There is no provision on this.

E. Are there sanctions for unapproved comment?

There is no provision on this.

Statute

Open Records and Meetings

Missouri Statutes

Title XXXIX. Conduct of Public Business

Chapter 610. Governmental Bodies and Records

610.010. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms mean:

(1) “Closed meeting”, “closed record”, or “closed vote”, any meeting, record or vote closed to the public;

(2) “Copying”, if requested by a member of the public, copies provided as detailed in section 610.026, if duplication equipment is available;

(3) “Public business”, all matters which relate in any way to the performance of the public governmental body’s functions or the conduct of its business;

(4) “Public governmental body”, 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, judicial entities when operating in an administrative capacity, or by executive order, including:

(a) Any body, agency, board, bureau, council, commission, committee, board of regents or board of curators or any other governing body of any institution of higher education, including a community college, which is supported in whole or in part from state funds, including but not limited to the administrative entity known as “The Curators of the University of Missouri” as established by section 172.020, RSMo;

(b) Any advisory committee or commission appointed by the governor by executive order;

(c) Any department or division of the state, of any political subdivision of the state, of any county or of any municipal government, school district or special purpose district including but not limited to sewer districts, water districts, and other subdistricts of any political subdivision;

(d) Any other legislative or administrative governmental deliberative body under the direction of three or more elected or appointed members having rulemaking or quasi-judicial power;

(e) 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 including, but not limited to, entities created to advise bi-state taxing districts regarding the expenditure of public funds, or any policy advisory body, policy advisory committee or policy advisory group appointed by a president, chancellor or chief executive officer of any college or university system or individual institution at the direction of the governing body of such institution which is supported in whole or in part with state funds for the specific purpose of recommending directly to the public governmental body’s governing board or the president, chancellor or chief executive officer policy, policy revisions or expenditures of public funds provided, however, the staff of the college or university president, chancellor or chief executive officer shall not constitute such a policy advisory committee. The custodian of the records of any public governmental body shall maintain a list of the policy advisory committees described in this subdivision;

(f) Any quasi-public governmental body. The term “quasi-public governmental body” means any person, corporation or partnership organized or authorized to do business in this state pursuant to the provisions of chapter 352, 353, or 355, RSMo, or unincorporated association which either:

a. Has as its primary purpose to enter into contracts with public governmental bodies, or to engage primarily in activities carried out pursuant to an agreement or agreements with public governmental bodies; or

b. Performs a public function as evidenced by a statutorily based

capacity to confer or otherwise advance, through approval, recommendation or other means, the allocation or issuance of tax credits, tax abatement, public debt, tax-exempt debt, rights of eminent domain, or the contracting of lease-back agreements on structures whose annualized payments commit public tax revenues; or any association that directly accepts the appropriation of money from a public governmental body, but only to the extent that a meeting, record, or vote relates to such appropriation; and

(g) Any bi-state development agency established pursuant to section 70.370, RSMo;

(5) “Public meeting”, any meeting of a public governmental body subject to sections 610.010 to 610.030 at which any public business is discussed. 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, but 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;

(6) “Public record”, 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; provided, however, that personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years. The term “public record” shall 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 as described in this subdivision shall be retained by the public governmental body in the same manner as any other public record;

(7) “Public vote”, any vote, whether conducted in person, by telephone, or by any other electronic means, cast at any public meeting of any public governmental body.

610.011. Liberal construction of law to be public policy

1. 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.

2. Except as otherwise provided by law, all public meetings of public governmental bodies shall be open to the public as set forth in section 610.020, all public records of public governmental bodies shall be open to the public for inspection and copying as set forth in sections 610.023 to 610.026, and all public votes of public governmental bodies shall be recorded as set forth in section 610.015.

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. 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.

610.020. Notice of meetings—content—time—emergency meetings—subunits—minutes of meetings

1. All public governmental bodies shall give notice of the time, date, and place of each meeting, and its tentative agenda, in a manner reasonably calculated to advise the public of the matters to be considered, and if the meeting will be conducted by telephone or other electronic means, the notice of the meeting shall identify the mode by which the meeting will be conducted and the designated location where the public may observe and attend the meeting. If a public body plans to meet by Internet chat, internet message board, or other computer link, it shall post a notice of the meeting on its web site in addition to its principal office and shall notify the public how to access that meeting. Reasonable notice shall include making available copies of the notice to any representative of the news media who requests notice of meetings of a particular public governmental body concurrent with the notice being made available to the members of the particular governmental body and posting the notice on a bulletin board or other prominent place which is easily accessible to the public and clearly designated for that purpose at the principal office of the body holding the meeting, or if no such office exists, at the building in which the meeting is to be held.

2. Notice conforming with all of the requirements of subsection 1 of this section shall be given at least twenty-four hours, exclusive of weekends and holidays when the facility is closed, prior to the commencement of any meeting of a governmental body unless for good cause such notice is impossible or impractical, in which case as much notice as is reasonably possible shall be given. Each meeting shall be held at a place reasonably accessible to the public and of sufficient size to accommodate the anticipated attendance by members of the public, and at a time reasonably convenient to the public, unless for good cause such a place or time is impossible or impractical. Every reasonable effort shall be made to grant special access to the meeting to handicapped or disabled individuals.

3. A public body shall allow for the recording by audiotape, videotape, or other electronic means of any open meeting. A public body may establish guidelines regarding the manner in which such recording is conducted so as to minimize disruption to the meeting. No audio recording of any meeting, record, or vote closed pursuant to the provisions of section 610.021 shall be permitted without permission of the public body; any person who violates this provision shall be guilty of a class C misdemeanor.

4. When it is necessary to hold a meeting on less than twenty-four hours' notice, or at a place that is not reasonably accessible to the public, or at a time that is not reasonably convenient to the public, the nature of the good cause justifying that departure from the normal requirements shall be stated in the minutes.

5. A formally constituted subunit of a parent governmental body may conduct a meeting without notice as required by this section during a lawful meeting of the parent governmental body, a recess in that meeting, or immediately following that meeting, if the meeting of the subunit is publicly announced at the parent meeting and the subject of the meeting reasonably coincides with the subjects discussed or acted upon by the parent governmental body.

6. If another provision of law requires a manner of giving specific notice of a meeting, hearing or an intent to take action by a governmental body, compliance with that section shall constitute compliance with the notice requirements of this section.

7. A journal or minutes of open and closed meetings shall be taken and retained by the public governmental body, including, but not limited to, a record of any votes taken at such meeting. The minutes shall include the date, time, place, members present, members absent and a record of any votes taken. When a roll call vote is taken, the minutes shall attribute each "yea" and "nay" vote or abstinence if not voting to the name of the individual member of the public governmental body.

610.021. Closed meetings, records, and votes

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:

(1) Legal actions, causes of action or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys. However, any minutes, vote or settlement agreement relating to legal actions, causes of action or litigation involving a public governmental body or any agent or entity representing its interests or acting on its behalf or with its authority, including any insurance company acting on behalf of a public governmental body as its insured, shall be made public upon final disposition of the matter voted upon or upon the signing by the parties of the settlement agreement, unless, prior to final disposition, the settlement agreement is ordered closed by a court after a written finding that the adverse impact to a plaintiff or plaintiffs to the action clearly outweighs the public policy considerations of section 610.011, however, the amount of any moneys paid by, or on behalf of, the public governmental body shall be disclosed; provided, however, in matters involving the exercise of the power of eminent domain, the vote shall be announced or become public immediately following the action on the motion to authorize institution of such a legal action. Legal work product shall be considered a closed record;

(2) Leasing, purchase or sale of real estate by a public governmental body where public knowledge of the transaction might adversely affect the legal consideration therefor. However, any minutes, vote or public record approving a contract relating to the leasing, purchase or sale of real estate by a public governmental body shall be made public upon execution of the lease, purchase or sale of the real estate;

(3) Hiring, firing, disciplining or promoting of particular employees by a public governmental body when personal information about the employee is discussed or recorded. However, any vote on a final decision, when taken by a public governmental body, to hire, fire, promote or discipline an employee of a public governmental body shall be made available with a record of how each member voted to the public within seventy-two hours of the close of the meeting where such action occurs; provided, however, that any employee so affected shall be entitled to prompt notice of such decision during the seventy-two-hour period before such decision is made available to the public. As used in this subdivision, the term "personal information" means information relating to the performance or merit of individual employees;

(4) The state militia or national guard or any part thereof;

(5) Nonjudicial mental or physical health proceedings involving identifiable persons, including medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment;

(6) Scholastic probation, expulsion, or graduation of identifiable individuals, including records of individual test or examination scores; however, personally identifiable student records maintained by public educational institutions shall be open for inspection by the parents, guardian or other custodian of students under the age of eighteen years and by the parents, guardian or other custodian and the student if the student is over the age of eighteen years;

(7) Testing and examination materials, before the test or examination is given or, if it is to be given again, before so given again;

(8) Welfare cases of identifiable individuals;

(9) Preparation, including any discussions or work product, on behalf of a public governmental body or its representatives for negotiations with employee groups;

(10) Software codes for electronic data processing and documentation thereof;

(11) Specifications for competitive bidding, until either the specifications are officially approved by the public governmental body or the specifications are published for bid;

(12) Sealed bids and related documents, until the bids are opened; and sealed proposals and related documents or any documents related to a negotiated contract until a contract is executed, or all proposals are rejected;

(13) Individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment, except that this exemption shall not apply to the names, positions, salaries and lengths of service of officers and employees of public agencies once they are employed as such, and the names of private sources donating or contributing money to the salary of a chancellor or president at all public colleges and universities in the state of Missouri and the amount of money contributed by the source;

(14) Records which are protected from disclosure by law;

(15) Meetings and public records relating to scientific and technological innovations in which the owner has a proprietary interest;

(16) Records relating to municipal hotlines established for the reporting of abuse and wrongdoing;

(17) Confidential or privileged communications between a public governmental body and its auditor, including all auditor work product; however, all final audit reports issued by the auditor are to be considered open records pursuant to this chapter;

(18) Operational guidelines and policies developed, adopted, or maintained by any public agency responsible for law enforcement, public safety, first response, or public health for use in responding to or preventing any critical incident which is or appears to be terrorist in nature and which has the potential to endanger individual or public safety or health. Nothing in this exception shall be deemed to close information regarding expenditures, purchases, or contracts made by an agency in implementing these guidelines or policies. When seeking to close information pursuant to this exception, the agency shall affirmatively state in writing that disclosure would impair its ability to protect the safety or health of persons, and shall in the same writing state that the public interest in nondisclosure outweighs the public interest in disclosure of the records. This exception shall sunset on December 31, 2012;

(19) Existing or proposed security systems and structural plans of real property owned or leased by a public governmental body, and information that is voluntarily submitted by a nonpublic entity owning or operating an infrastructure to any public governmental body for use by that body to devise plans for protection of that infrastructure, the public disclosure of which would threaten public safety:

(a) Records related to the procurement of or expenditures relating to security systems purchased with public funds shall be open;

(b) When seeking to close information pursuant to this exception, the public governmental body shall affirmatively state in writing that disclosure would impair the public governmental body's ability to protect the security or safety of persons or real property, and shall in the same writing state that the public interest in nondisclosure outweighs the public interest in disclosure of the records;

(c) Records that are voluntarily submitted by a nonpublic entity shall be reviewed by the receiving agency within ninety days of submission to determine if retention of the document is necessary in furtherance of a state security interest. If retention is not necessary, the documents shall be returned to the nonpublic governmental body or destroyed;

(d) This exception shall sunset on December 31, 2012;

(20) Records that identify the configuration of components or the operation of a computer, computer system, computer network, or telecommunications network, and would allow unauthorized access to or unlawful disruption of a computer, computer system, computer network, or telecommunications network of a public governmental body. This exception shall not be used to limit or deny access to otherwise public records in a file, document, data file or database containing public records. Records related to the procurement of or expenditures relating to such computer, computer system, computer network, or telecommunications network, including the amount of moneys paid by, or on behalf of, a public governmental body for such computer, computer system, computer network, or telecommunications network shall be open;

(21) Credit card numbers, personal identification numbers, digital certificates, physical and virtual keys, access codes or authorization codes that are used to protect the security of electronic transactions between a public governmental body and a person or entity doing business with a public governmental body. Nothing in this section shall be deemed to close the record of a person or entity using a credit card held in the name of a public governmental body or any record of a transaction made by a person using a credit card or other method of payment for which reimbursement is made by a public governmental body; and

(22) Records submitted by an individual, corporation, or other business entity to a public institution of higher education in connection with a proposal to license intellectual property or perform sponsored research and which contains sales projections or other business plan information the disclosure of which may endanger the competitiveness of a business.

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.

3. 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. Public governmental bodies shall not discuss any business in a closed meeting, record or vote which does not directly relate to the specific reason announced to justify the closed meeting or vote. 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 the 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.

4. Nothing in sections 610.010 to 610.028 shall be construed as to require a public governmental body to hold a closed meeting, record or vote to discuss or act upon any matter.

5. Public records shall be presumed to be open unless otherwise exempt pursuant to the provisions of this chapter.

6. In the event any member of a public governmental body makes a motion to close a meeting, or a record, or a vote from the public and any other member believes that such motion, if passed, would cause a meeting, record or vote to be closed from the public in violation of any provision in this chapter, such latter member shall state his or her objection to the motion at or before the time the vote is taken on the motion. The public governmental body shall enter in the minutes of the public governmental body any objection made pursuant to this subsection. Any member making such an objection shall be allowed to fully participate in any meeting, record or vote that is closed from the public over the member's objection. In the event the objecting member also voted in opposition to the motion to close the meeting, record or vote at issue, the objection and vote of the member as entered in the minutes shall be an absolute defense to any claim filed against the objecting member pursuant to section 610.027.

610.023. Records of governmental bodies to be in care of custodian, duties—records may be copied but not removed, exception, procedure—denial of access, procedure

1. Each public governmental body is to appoint a custodian who is to be responsible for the maintenance of that body's records. The identity and location of a public governmental body's custodian is to be made available upon request.

2. Each public governmental body shall make available for inspection and copying by the public of that body's public records. No person shall remove original public records from the office of a public governmental body or its custodian without written permission of the designated custodian. No public governmental body shall, after August 28, 1998, grant to any person or entity, whether by contract, license or otherwise, the exclusive right to access and disseminate any public record unless the granting of such right is necessary to facilitate coordination with, or uniformity among, industry regulators having similar authority.

3. Each request for access to a public record shall be acted upon as soon as possible, but in no event later than the end of the third business day following the date the request is received by the custodian of records of a public governmental body. If records are requested in a certain format, the public body shall provide the records in the requested format, if such format is available. If access to the public record is not granted immediately, the custodian shall give a detailed explanation of the cause for further delay and the place and earliest time and date that the record will be available for inspection. This period for document production may exceed three days for reasonable cause.

4. If a request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for such denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester no later than the end of the third business day following the date that the request for the statement is received.

610.024. Exempt and nonexempt data in same record—design of records—description of exempt matter

1. If a public record contains material which is not exempt from disclosure as well as material which is exempt from disclosure, the public governmental body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.

2. When designing a public record, a public governmental body shall, to the extent practicable, facilitate a separation of exempt from nonexempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the public governmental body shall generally describe the material exempt unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

610.025. Transmission of messages relating to public business by electronic means—public record

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. The provisions of this section shall only apply to messages sent to two 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.

610.026. Fees for copying public records, limitations—fee money remitted to whom—tax, license or fee as used in Missouri Constitution Article X section 22 not to include copying fees

1. Except as otherwise provided by law, each public governmental body shall provide access to and, upon request, furnish copies of public records subject to the following:

(1) Fees for copying public records, except those records restricted under section 32.091, RSMo, shall not exceed ten cents per page for a paper copy not larger than nine by fourteen inches, with the hourly fee for duplicating time not to exceed the average hourly rate of pay for clerical staff of the public governmental body. Research time required for fulfilling records requests may be charged at the actual cost of research time. Based on the scope of the request, the public governmental body shall produce the copies using employees of the body that result in the lowest amount of charges for search, research, and duplication time. Prior to producing copies of the requested records, the person requesting the records may request the public governmental body to provide an estimate of the cost to the person requesting the records. Documents may be furnished without charge or at a reduced charge when the public governmental body determines that waiver or reduction of the fee is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the public governmental body and is not primarily in the commercial interest of the requester;

(2) Fees for providing access to public records maintained on computer facilities, recording tapes or disks, videotapes or films, pictures, maps, slides, graphics, illustrations or similar audio or visual items or devices, and for paper copies larger than nine by fourteen inches shall include only the cost of copies, 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, and the cost of the disk, tape, or other medium used for the duplication. Fees for maps, blueprints, or plats that require special expertise to duplicate may include the actual rate of compensation for the trained personnel required to duplicate such maps, blueprints, or plats. If programming is required beyond the customary and usual level to comply with a request for records or information, the fees for compliance may include the actual costs of such programming.

2. Payment of such copying fees may be requested prior to the making of copies.

3. 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.

4. Except as otherwise provided by law, each public governmental body of a political subdivision of the state shall remit all moneys received by it or for it from fees charged pursuant to sections 610.010 to 610.028 to the appropri-

ate fiscal officer of such political subdivision for deposit to the governmental body's accounts.

5. The term "tax, license or fees" as used in section 22 of article X of the Constitution of the State of Missouri does not include copying charges and related fees that do not exceed the level necessary to pay or to continue to pay the costs for providing a service, program, or activity which was in existence on November 4, 1980, or which was approved by a vote of the people subsequent to November 4, 1980.

610.027. Violations—remedies, procedure, penalty—validity of actions by governing bodies in violation—governmental bodies may seek interpretation of law, attorney general to provide

1. The remedies provided by this section against public governmental bodies shall be in addition to those provided by any other provision of law. Any aggrieved person, taxpayer to, or citizen of, this state, or the attorney general or prosecuting attorney, may seek judicial enforcement of the requirements of sections 610.010 to 610.026. Suits to enforce sections 610.010 to 610.026 shall be brought in the circuit court for the county in which the public governmental body has its principal place of business. Upon service of a summons, petition, complaint, counterclaim, or cross-claim in a civil action brought to enforce the provisions of sections 610.010 to 610.026, the custodian of the public record that is the subject matter of such civil action shall not transfer custody, alter, destroy, or otherwise dispose of the public record sought to be inspected and examined, notwithstanding the applicability of an exemption pursuant to section 610.021 or the assertion that the requested record is not a public record until the court directs otherwise.

2. Once a party seeking judicial enforcement of sections 610.010 to 610.026 demonstrates to the court that the body in question is subject to the requirements of sections 610.010 to 610.026 and has held a closed meeting, record or vote, the burden of persuasion shall be on the body and its members to demonstrate compliance with the requirements of sections 610.010 to 610.026.

3. Upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has knowingly violated sections 610.010 to 610.026, the public governmental body or the member shall be subject to a civil penalty in an amount up to one thousand dollars. If the court finds that there is a knowing violation of sections 610.010 to 610.026, the court may order the payment by such body or member of all costs and reasonable attorney fees to any party successfully establishing a violation. The court shall determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the public governmental body or member of a public governmental body has violated sections 610.010 to 610.026 previously.

4. Upon a finding by a preponderance of the evidence that a public governmental body or a member of a public governmental body has purposely violated sections 610.010 to 610.026, the public governmental body or the member shall be subject to a civil penalty in an amount up to five thousand dollars. If the court finds that there was a purposeful violation of sections 610.010 to 610.026, then the court shall order the payment by such body or member of all costs and reasonable attorney fees to any party successfully establishing such a violation. The court shall determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the public governmental body or member of a public governmental body has violated sections 610.010 to 610.026 previously.

5. Upon a finding by a preponderance of the evidence that a public governmental body has violated any provision of sections 610.010 to 610.026, a court shall void any action taken in violation of sections 610.010 to 610.026, if the court finds under the facts of the particular case that the public interest in the enforcement of the policy of sections 610.010 to 610.026 outweighs the public interest in sustaining the validity of the action taken in the closed meeting, record or vote. Suit for enforcement shall be brought within one year from which the violation is ascertainable and in no event shall it be brought later than two years after the violation. This subsection shall not apply to an action taken regarding the issuance of bonds or other evidence of indebtedness of a public governmental body if a public hearing, election or public sale has been held regarding the bonds or evidence of indebtedness.

6. A public governmental body which is in doubt about the legality of closing a particular meeting, record or vote may bring suit at the expense of that public governmental body in the circuit court of the county of the public governmental body's principal place of business to ascertain the propriety of any such action, or seek a formal opinion of the attorney general or an attorney for the governmental body.

610.028. Legal defense of members of governmental bodies, when—written policy on release of information required—persons reporting violations exempt from liability and discipline

1. Any public governmental body may provide for the legal defense of any member charged with a violation of sections 610.010 to 610.030.

2. 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 and any member or employee of the public governmental body who complies with the written policy is not guilty of a violation of the provisions of sections 610.010 to 610.030 or subject to civil liability for any act arising out of his adherence to the written policy of the agency.

3. No person who in good faith reports a violation of the provisions of sections 610.010 to 610.030 is civilly liable for making such report, nor, if such person is an officer or employee of a public governmental body, may such person be demoted, fired, suspended, or otherwise disciplined for making such report.

610.029. Electronic services—contract for creation or maintenance of public records database

1. 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 an electronic format. A public governmental body is strongly encouraged to make information available in usable electronic formats to the greatest extent feasible. A public governmental body may not enter into a contract for the creation or maintenance of a public records database if that contract impairs the ability of the public to inspect or copy the public records of that agency, including public records that are on-line or stored in an electronic record-keeping system used by the agency. Such contract may not allow any impediment that as a practical matter makes it more difficult for the public to inspect or copy the records than to inspect or copy the public governmental body's records. For purposes of this section, a usable electronic format shall allow, at a minimum, viewing and printing of records. However, if the public governmental body keeps a record on a system capable of allowing the copying of electronic documents into other electronic documents, the public governmental body shall provide data to the public in such electronic format, if requested. The activities authorized pursuant to this section may not take priority over the primary responsibilities of a public governmental body. For purposes of this section the term "electronic services" means on-line access or access via other electronic means to an electronic file or database. This subsection shall not apply to contracts initially entered into before August 28, 2004.

2. Public governmental bodies shall include in a contract for electronic services provisions that:

(1) Protect the security and integrity of the information system of the public governmental body and of information systems that are shared by public governmental bodies; and

(2) Limit the liability of the public governmental body providing the services.

3. Each public governmental body may consult with the division of data processing and telecommunications of the office of administration to develop the electronic services offered by the public governmental body to the public pursuant to this section.

610.030. Injunctive relief authorized

The circuit courts of this state shall have the jurisdiction to issue injunctions to enforce the provisions of sections 610.010 to 610.115.

610.032. Closed records and information—disclosure of information— executive agency

1. If an executive agency's records are closed by law, it may not disclose any information contained in such closed records in any form that would allow identification of individual persons or entities unless:

(1) Disclosure of such information is made to a person in that person's official capacity representing an executive agency and the disclosure is necessary for the requesting executive agency to perform its constitutional or statutory duties; or

(2) Disclosure is otherwise required by law.

2. Notwithstanding any other provision of law to the contrary, including, but not limited to, section 32.057, RSMo, such closed information may be disclosed pursuant to this section; however, the providing executive agency may request, as a condition of disclosing such information, that the requesting executive agency submit:

(1) The constitutional or statutory duties necessitating the disclosure of such information;

(2) The name and official capacity of the person or persons to whom such information will be disclosed;

(3) An affirmation that such information will be used only in furtherance of such constitutional or statutory duties; and

(4) The date upon which the access is requested to begin, when the request is for continuous access.

3. Any executive agency receiving such a request for closed information shall keep the request on file and shall only release such information to the person or persons listed on such request. If the request is for continuous access to such information, the executive agency shall honor the request for a period of one year from the beginning date indicated on such request. If the requesting executive agency requests such information for more than one year, the agency shall provide an updated request for closed information to the providing executive agency upon expiration of the initial request.

4. Any person receiving or releasing closed information pursuant to this section shall be subject to any laws, regulations or standards of the providing executive agency regarding the confidentiality or misuse of such information and shall be subject to any penalties provided by such laws, regulations or standards for the violation of the confidentiality or misuse of such information.

5. For the purposes of this section, "executive agency" means any administrative governmental entity created by the constitution or statutes of this state under the executive branch, including any department, agency, board, bureau, council, commission, committee, board of regents or board of curators of any institution of higher learning supported in whole or in part by state funds, any subdivision of an executive agency, and any legally designated agent of such entity.

610.035. Social security number; public disclosure

No state entity shall publicly disclose any Social Security number of a living person unless such disclosure is permitted by federal law, federal regulation or state law or unless such disclosure is authorized by the holder of that Social Security number or unless such disclosure is for use in connection with any civil, criminal, administrative or arbitral proceeding in any federal, state or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state or local court. Notwithstanding any other provision of law to the contrary, the disclosure of Social Security numbers of deceased persons shall be lawful, provided that the state agency disclosing the information knows of no reason why such disclosure would prove detrimental to the deceased individual's estate or harmful to the deceased individual's living relatives. For the purposes of this section, "publicly disclose" shall not include the use of any Social Security number by any state entity in the performance of any statutory or constitutional duty or power or the disclosure of any Social Security number to another state entity, political subdivision, agency of the federal government, agency of another state or any private person or entity acting on behalf of, or in cooperation with, a state entity. Any person or entity receiving a Social Security number from any entity shall be subject to the same confidentiality provisions as the disclosing entity. For purposes of this section, "state entity" means any state department, division, agency, bureau, board, commission, employee or any agent thereof. When responding to any requests for public information pursuant to this chapter, any costs incurred by any state entity complying with the provisions of this section may be charged to the requester of such information.

Arrest Records

610.100. Records required—public access—court ordered access—violations— sex offense victims, disclosure of identity

1. As used in sections 610.100 to 610.150, the following words and phrases shall mean:

(1) “Arrest”, an actual restraint of the person of the defendant, or by his or her submission to the custody of the officer, under authority of a warrant or otherwise for a criminal violation which results in the issuance of a summons or the person being booked;

(2) “Arrest report”, a record of a law enforcement agency of an arrest and of any detention or confinement incident thereto together with the charge therefor;

(3) “Inactive”, an investigation in which no further action will be taken by a law enforcement agency or officer for any of the following reasons:

(a) A decision by the law enforcement agency not to pursue the case;

(b) Expiration of the time to file criminal charges pursuant to the applicable statute of limitations, or ten years after the commission of the offense; whichever date earliest occurs;

(c) Finality of the convictions of all persons convicted on the basis of the information contained in the investigative report, by exhaustion of or expiration of all rights of appeal of such persons;

(4) “Incident report”, 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;

(5) “Investigative report”, 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.

2. Each law enforcement agency of this state, of any county, and of any municipality shall maintain records of all incidents reported to the agency, investigations and arrests made by such law enforcement agency. All incident reports and arrest reports shall be open records. Notwithstanding any other provision of law other than the provisions of subsections 4, 5 and 6 of this section or section 320.083, RSMo, investigative reports of all law enforcement agencies are closed records until the investigation becomes inactive. If any person is arrested and not charged with an offense against the law within thirty days of the person’s arrest, the arrest report shall thereafter be a closed record except that the disposition portion of the record may be accessed and except as provided in section 610.120.

3. Except as provided in subsections 4, 5, 6 and 7 of this section, if any portion of a record or document of a law enforcement officer or agency, other than an arrest report, which would otherwise be open, contains information that 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, that portion of the record shall be closed and shall be redacted from any record made available pursuant to this chapter.

4. Any person, including a 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. Any individual, his or her family member within the first degree of consanguinity if such individual is deceased or incompetent, his or her attorney or insurer, involved in an incident or whose property is involved in an incident, upon written request, may obtain a complete unaltered and unedited incident report concerning the incident, and may obtain access to other records closed by a law enforcement agency pursuant to this section. Within thirty days of such request, the agency shall provide the requested material or file a motion pursuant to this subsection with the circuit court having jurisdiction over the law enforcement agency stating that the safety of the victim, witness or other individual cannot be reasonably ensured, or that a criminal investigation is likely to be jeopardized. If, based on such motion, the court finds for the law enforcement agency, the court shall either order the record closed or order such portion of the record that should be closed to be redacted from any record made available pursuant to this subsection.

5. Any person may bring an action pursuant to this section in the circuit court having jurisdiction to authorize disclosure of 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 the information contained in an investigative report be released to the person

bringing the action. In making the determination as to whether information contained in an investigative report shall be disclosed, the court shall consider whether the benefit to the person bringing the action or to the public outweighs any harm to the public, to the law enforcement agency or any of its officers, or to any person identified in the investigative report in regard to the need for law enforcement agencies to effectively investigate and prosecute criminal activity. The investigative report in question may be examined by the court in camera. The court may find that the party seeking disclosure of the investigative report shall bear the reasonable and necessary costs and attorneys’ fees of both parties, unless the court finds that the decision of the law enforcement agency not to open the investigative report was substantially unjustified under all relevant circumstances, and in that event, the court may assess such reasonable and necessary costs and attorneys’ fees to the law enforcement agency.

6. Any person may apply pursuant to this subsection to the circuit court having jurisdiction for an order requiring a law enforcement agency to open incident reports and arrest reports being unlawfully closed pursuant to this section. If the court finds by a preponderance of the evidence that the law enforcement officer or agency has knowingly violated this section, the officer or agency shall be subject to a civil penalty in an amount up to one thousand dollars. If the court finds that there is a knowing violation of this section, the court may order payment by such officer or agency of all costs and attorneys’ fees, as provided by section 610.027. If the court finds by a preponderance of the evidence that the law enforcement officer or agency has purposely violated this section, the officer or agency shall be subject to a civil penalty in an amount up to five thousand dollars and the court shall order payment by such officer or agency of all costs and attorney fees, as provided in section 610.027. The court shall determine the amount of the penalty by taking into account the size of the jurisdiction, the seriousness of the offense, and whether the law enforcement officer or agency has violated this section previously.

7. The victim of an offense as provided in chapter 566, RSMo, may request that his or her identity be kept confidential until a charge relating to such incident is filed.

610.103. Criminal background check, homeless former members of the armed forces

Notwithstanding any other provision of law to the contrary, whenever a criminal background check is requested in connection with gaining employment, housing or any other services or benefit of any homeless former member of the organized militia or the armed forces of the United States who has been honorably discharged, such background check shall be completed and transmitted to the requesting party without any fee or other compensation for such background check or copy of any relevant public record pertaining to such request. For purposes of this section “homeless” means an involuntary state characterized by a lack of housing or shelter.

610.105. Effect of nolle pros—dismissal—sentence suspended on record

1. 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 except as provided in subsection 2 of this section and section 610.120 and except that the court’s judgment or order or the final action taken by the prosecutor in such matters may be accessed. If the accused is found not guilty due to mental disease or defect pursuant to section 552.030, RSMo, official records pertaining to the case shall thereafter be closed records upon such findings, except that the disposition may be accessed only by law enforcement agencies, child-care agencies, facilities as defined in section 198.006, RSMo, and in-home services provider agencies as defined in section 660.250, RSMo, in the manner established by section 610.120.

2. If the person arrested is charged with an offense found in chapter 566, RSMo, section 568.045, 568.050, 568.060, 568.065, 568.080, 568.090, or 568.175, RSMo, and an imposition of sentence is suspended in the court in which the action is prosecuted, the official records pertaining to the case shall be made available to the victim for the purpose of using the records in his or her own judicial proceeding, or if the victim is a minor to the victim’s parents or guardian, upon request.

610.106. Suspended sentence prior to September 28, 1981, procedure to close records

Any person as to whom imposition of sentence was suspended prior to September 28, 1981, may make a motion to the court in which the action was

prosecuted after his discharge from the court's jurisdiction for closure of official records pertaining to the case. If the prosecuting authority opposes the motion, an informal hearing shall be held in which technical rules of evidence shall not apply. Having regard to the nature and circumstances of the offense and the history and character of the defendant and upon a finding that the ends of justice are so served, the court may order official records pertaining to the case to be closed, except as provided in section 610.120.

610.110. Failure to recite closed record excused—exceptions

No person as to whom such records have become closed records shall thereafter, under any provision of law, be held to be guilty of perjury or otherwise of giving a false statement by reason of his failure to recite or acknowledge such arrest or trial in response to any inquiry made of him for any purpose, except as provided in section 491.050, RSMo, and section 610.120.

610.115. Penalty

A person who knowingly violates any provision of section 610.100, 610.105, 610.106, or 610.120 is guilty of a class A misdemeanor.

610.120. Records to be confidential—accessible to whom, purposes—child care, defined

1. Records required to be closed shall not be destroyed; they shall be inaccessible to the general public and to all persons other than the defendant except as provided in this section and section 43.507, RSMo. The closed records shall be available to: criminal justice agencies for the administration of criminal justice pursuant to section 43.500, RSMo, criminal justice employment, screening persons with access to criminal justice facilities, procedures, and sensitive information; to law enforcement agencies for issuance or renewal of a license, permit, certification, or registration of authority from such agency including but not limited to watchmen, security personnel, private investigators, and persons seeking permits to purchase or possess a firearm; those agencies authorized by section 43.543, RSMo, to submit and when submitting fingerprints to the central repository; the sentencing advisory commission created in section 558.019, RSMo, for the purpose of studying sentencing practices in accordance with section 43.507, RSMo; to qualified entities for the purpose of screening providers defined in section 43.540, RSMo; the department of revenue for driver license administration; the division of workers' compensation for the purposes of determining eligibility for crime victims' compensation pursuant to sections 595.010 to 595.075, RSMo, department of health and senior services for the purpose of licensing and regulating facilities and regulating in-home services provider agencies and federal agencies for purposes of criminal justice administration, criminal justice employment, child, elderly, or disabled care, and for such investigative purposes as authorized by law or presidential executive order.

2. These records shall be made available only for the purposes and to the entities listed in this section. A criminal justice agency receiving a request for criminal history information under its control may require positive identification, to include fingerprints of the subject of the record search, prior to releasing closed record information. Dissemination of closed and open records from the Missouri criminal records repository shall be in accordance with section 43.509, RSMo. All records which are closed records shall be removed from the records of the courts, administrative agencies, and law enforcement agencies which are available to the public and shall be kept in separate records which are to be held confidential and, where possible, pages of the public record shall be retyped or rewritten omitting those portions of the record which deal with the defendant's case. If retyping or rewriting is not feasible because of the permanent nature of the record books, such record entries shall be blacked out and recopied in a confidential book.

610.122. Expunging arrest records, grounds

Notwithstanding other provisions of law to the contrary, any record of arrest recorded pursuant to section 43.503, RSMo, may be expunged if the court determines that the arrest was based on false information and the following conditions exist:

- (1) There is no probable cause, at the time of the action to expunge, to believe the individual committed the offense;
- (2) No charges will be pursued as a result of the arrest;

(3) The subject of the arrest has no prior or subsequent misdemeanor or felony convictions;

(4) The subject of the arrest did not receive a suspended imposition of sentence for the offense for which the arrest was made or for any offense related to the arrest; and

(5) No civil action is pending relating to the arrest or the records sought to be expunged.

610.123. Petition to expunge—expungement order—rulemaking—filing fee

1. Any person who wishes to have a record of arrest expunged pursuant to section 610.122 may file a verified petition for expungement in the civil division of the circuit court in the county of the arrest as provided in subsection 4 of this section. The petition shall include the following information or shall be dismissed if the information is not given:

- (1) The petitioner's:
 - (a) Full name;
 - (b) Sex;
 - (c) Race;
 - (d) Date of birth;
 - (e) Driver's license number;
 - (f) Social Security number; and
 - (g) Address at the time of the arrest;
- (2) The offense charged against the petitioner;
- (3) The date the petitioner was arrested;
- (4) The name of the county where the petitioner was arrested and if the arrest occurred in a municipality, the name of the municipality;
- (5) The name of the agency that arrested the petitioner;
- (6) The case number and court of the offense;
- (7) Petitioner's fingerprints on a standard fingerprint card at the time of filing a petition to expunge a record that will be forwarded to the central repository for the sole purpose of positively identifying the petitioner.

2. The petition shall name as defendants all law enforcement agencies, courts, prosecuting attorneys, central state depositories of criminal records or others who the petitioner has reason to believe may possess the records subject to expungement. The court's order shall not affect any person or entity not named as a defendant in the action.

3. The court shall set a hearing on the matter no sooner than thirty days from the filing of the petition and shall give reasonable notice of the hearing to each official or agency or other entity named in the petition.

4. If the court finds that the petitioner is entitled to expungement of any record that is the subject of the petition, it shall enter an order directing expungement. Upon granting of the order of expungement, the records and files maintained in any administrative or court proceeding in an associate or circuit division of the circuit court under this section shall be confidential and only available to the parties or by order of the court for good cause shown. A copy of the order shall be provided to each agency identified in the petition pursuant to subsection 2 of this section.

5. The supreme court shall promulgate rules establishing procedures for the handling of cases filed pursuant to the provisions of this section and section 610.122. Such procedures shall be similar to the procedures established in chapter 482, RSMo, for the handling of small claims.

610.124. Destruction of records ordered expunged—FBI requested to expunge records—protest of expungement

1. All records ordered to be expunged pursuant to section 610.123 shall be destroyed, except as provided in this section. If destruction of the record is not feasible because of the permanent nature of the record books, such record entries shall be blacked out. Entries of a record ordered expunged pursuant to section 610.123 shall be removed from all electronic files maintained with the state of Missouri. The central repository shall request the Federal Bureau of

Investigation expunge the records from its files.

2. Any petitioner, or agency protesting the expungement, may appeal the court's decision in the same manner as provided for other civil actions.

610.125. Failure to expunge records—use of expunged records for financial gain

1. A person subject to an order of the court in subsection 4 of section 610.123 who knowingly fails to expunge or obliterate, or releases arrest information which has been ordered expunged pursuant to section 610.123 is guilty of a class B misdemeanor.

2. A person subject to an order of the court in subsection 4 of section 610.123 who, knowing the records have been ordered expunged, uses the arrest information for financial gain is guilty of a class D felony.

610.126. Validity of arrest, effect of expungement—maintenance of records for driver's license administration—authority to expunge arrest records—actions subsequent to expungement and based on arrest

1. An expungement of an arrest record shall not reflect on the validity of the arrest and shall not be construed to indicate a lack of probable cause for the arrest.

2. Except as provided by sections 610.122 to 610.126, the courts of this state shall have no legal or equitable authority to close or expunge any arrest record.

3. The petitioner shall not bring any action subsequent to the expungement against any person or agency relating to the arrest described in the expunged records.

“911” Reports—Confidential

610.150. “911” telephone reports confidential, exceptions

Except as provided by this section, any information acquired by a law enforcement agency by way of a complaint or report of a crime made by telephone contact using the emergency number, “911”, shall be inaccessible to the general public. However, information consisting of the date, time, specific location and immediate facts and circumstances surrounding the initial report of the crime or incident shall be considered to be an incident report and subject to section 610.100. Any closed records pursuant to this section shall be available upon request by law enforcement agencies or the division of workers' compensation or pursuant to a valid court order authorizing disclosure upon motion and good cause shown.

Law Enforcement Agency Records

610.200. Daily log or record maintained by local law enforcement agencies of crimes, accidents or complaints—public access to certain information

All law enforcement agencies that maintain a daily log or record that lists suspected crimes, accidents, or complaints shall make available the following information for inspection and copying by the public:

- (1) The time, substance, and location of all complaints or requests for assistance received by the agency;
- (2) The time and nature of the agency's response to all complaints or requests for assistance; and
- (3) If the incident involves an alleged crime or infraction:
 - (a) The time, date, and location of occurrence;
 - (b) The name and age of any victim, unless the victim is a victim of a crime under chapter 566, RSMo;
 - (c) The factual circumstances surrounding the incident; and
 - (d) A general description of any injuries, property or weapons involved.

Tax Credit Records

610.225. Tax credit applications—access to records and documents

1. Records and documents relating to tax credits submitted as part of the application for all tax credits to any department of this state, board, or commission authorized to issue or authorize or recommend the authorization of tax credits shall be deemed closed records until such time as the information submitted does not concern a pending application, and except as limited by other provision of law concerning closed records. For the purposes of this subsection, a “pending application” shall mean any application for credits that has not yet been authorized. In the case of partial authorization of credits, the completed authorization of a single credit shall be sufficient to constitute full authorization to the extent that the authorized credit or credits relate to the same application as the credits that have not yet been authorized.

2. Upon a request for opening of records and documents relating to all tax credit programs, as defined in section 135.800, RSMo, submitted in accordance with the provisions of this chapter, except as limited by the provision of subsection 1 of this section, the agency that is the recipient of the open records request shall make information available consistent with the provisions of this chapter. Where a single record or document contains both open and closed records, the agency shall make a redacted version of such record or document available in order to protect the information that would otherwise make the record or document a closed record. Staff time required for such redaction shall constitute an activity for which a fee can be collected pursuant to section 610.026.

3. As used in this section “closed record” shall mean closed record as defined in section 610.010.

Missouri Statutes

Title VIII. Public Officers and Employees, Bonds and Records

Chapter 109. Public and Business Records

Transcribing and Rebinding

109.180. Public records open to inspection—refusal to permit inspection, penalty

Except as otherwise provided by law, all state, county and municipal records kept pursuant to statute or ordinance shall at all reasonable times be open for a personal inspection by any citizen of Missouri, and those in charge of the records shall not refuse the privilege to any citizen. Any official who violates the provisions of this section shall be subject to removal or impeachment and in addition shall be deemed guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding one hundred dollars, or by confinement in the county jail not exceeding ninety days, or by both the fine and the confinement.

109.190. Right of person to photograph public records—regulations

In all cases where the public or any person interested has a right to inspect or take extracts or make copies from any public records, instruments or documents, any person has the right of access to the records, documents or instruments for the purpose of making photographs of them while in the possession, custody and control of the lawful custodian thereof or his authorized deputy. The work shall be done under the supervision of the lawful custodian of the records who may adopt and enforce reasonable rules governing the work. The work shall, where possible, be done in the room where the records, documents or instruments are by law kept, but if that is impossible or impracticable, the work shall be done in another room or place as nearly adjacent to the place of custody as possible to be determined by the custodian of the records. While the work authorized herein is in progress, the lawful custodian of the records may charge the person desiring to make the photographs a reasonable rate for his services or for the services of a deputy to supervise the work and for the use of the room or place where the work is done.

