

# Missouri Sunshine Law

Open Meetings and Records Law



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# Introduction

*The Sunshine Law brings transparency and fairness to all aspects of government.*

With the passage of Senate Bill 1 in 1973, Missouri became one of the earliest advocates for opening meetings and records – at all levels of government – to the people.

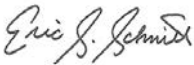
The Sunshine Law declares Missouri’s commitment to openness in government in § 610.011, RSMo.: “It is the public policy of this state that meetings, records, votes, actions, and deliberations of public governmental bodies be open to the public unless otherwise provided by law. Sections 610.010 to 610.200 shall be liberally construed and their exceptions strictly construed to promote this public policy.”

The law sets out the limited instances when meetings, records, and votes may be closed, while stressing that these exceptions are to be strictly interpreted to promote the public policy of openness.

Public meetings, including meetings conducted by telephone, internet, or other electronic means are to be held at reasonably convenient times and must be accessible to the public. Meetings should be held in facilities that are large enough to accommodate anticipated attendance by the public and accessible to persons with disabilities.

A healthy democracy relies on an engaged citizenry informed by transparent government officials. We are proud to provide you with this Sunshine Law booklet, and hope that you find the resources in its pages useful. Whether you are a public official, a public employee, or an involved member of your community, you serve an important role in ensuring that government – at every level – works for us all.

Sincerely,



**Eric Schmitt**

Attorney General

# Sunshine Law: Top Ten Things to Know

1. When in doubt, a meeting or record of a public body should be opened to the public.
2. The Sunshine Law applies to all records, regardless of what form they are kept in, and to all meetings, regardless of the manner in which they are held.
3. The Sunshine Law allows a public body to close meetings and records to the public in some limited circumstances, but it almost never requires a public body to do so.
4. Except in emergency situations, a public body must give at least 24 hours' public notice before holding a meeting. If the meeting will be closed to the public, the notice must state the specific provision within Section 610.021, RSMo., that allows the meeting to be closed.
5. Each public body must have a written Sunshine Law policy and a custodian of records whose name is available to the public upon request.
6. The Sunshine Law requires a custodian of records to respond to a records request as soon as possible but no later than three business days after the custodian receives it.
7. The Sunshine Law deals with whether a public body's records must be open to the public, but it generally does not state what records the body must keep or for how long. A body cannot, however, avoid a records request by destroying records after it receives a request for those records. For more information concerning records retention schedules, please visit the Missouri Secretary of State's Website – the Local Records Division for local public governmental bodies, and the Records Management Division for state agencies.
8. The Sunshine Law allows for public meetings to be both audio and video recorded by attendees. Each public governmental body may set up guidelines regarding the recording process. These guidelines can be found in the body's Sunshine Law Policy. No one is allowed to record a closed meeting, if they are not given permission to do so.
9. When responding to a request for copies of its records, the Sunshine Law limits how much a public body can charge – per page, and per hour – for copying and research costs.
10. There are specific provisions governing access to law enforcement and judicial records.

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# A Citizen's Guide to Missouri's Sunshine Law

While it is important to familiarize yourself with the entire text of the Sunshine Law, this portion is dedicated to providing its core tenets in plain, straightforward language. We hope it serves as an accessible foundation upon which you may build an in-depth understanding of this important set of statutes.

## **PUBLIC POLICY FAVORING OPENNESS**

Except when closure is allowed by law, all public meetings and public records of public governmental bodies must be open and available to the public, and all of their public votes shall be recorded. Meetings and records of public governmental bodies may (though not "shall") be closed for the reasons listed in Section 610.021, RSMo. (including, but not limited to, privileged discussions with a body's lawyers or auditors, certain personnel matters, sealed bids until opened, social security numbers, and certain public safety, security system, and computer access information.)

The Sunshine Law applies to "public governmental bodies" – virtually all arms of state and local government, as well as "quasi-public governmental bodies," which are persons or corporations which, primarily, enter into contracts with public governmental bodies, accept public funds, or perform public functions. Subcommittees appointed to make recommendations to public bodies are also covered by the law.

Each public governmental body must have a written Sunshine Law policy available to members of the public, and a Custodian of Records whose name is available to the public upon request.

## **ENFORCEMENT OF THE SUNSHINE LAW**

A lawsuit to enforce the Sunshine Law may be brought by any citizen, county prosecutor, or the Attorney General, in the circuit court of the county where the public governmental body has its principal place of business. Suit must be filed within one year from when the violation is ascertainable, and in no event later than two years after the violation occurred.

Statute provides specific consequences for violating the Sunshine Law. "Knowing" violations result in civil fines up to \$1,000.00. "Purposeful" violations result in civil fines up to \$5,000.00, plus attorneys' fees. Injunctive relief is also available. When the public interest requires, courts may void actions taken in violation of the Sunshine Law.



Complaints and concerns regarding enforcement of Missouri's Sunshine Law may be directed to the Missouri Attorney General's Office or any local prosecuting attorney.

## MEETINGS OF PUBLIC GOVERNMENT BODIES

Meetings of public governmental bodies, where a quorum is present, and public business is discussed, are subject to the Sunshine Law. This includes telephone conferences and internet chat sessions, as well as meetings, or a series of meetings, each involving fewer than a quorum of the members, but collectively involving a quorum of the public body, where the body's members deliberately attempt to discuss public business while evading the Sunshine Law.

Notices of all meetings must be posted at least 24 hours in advance. If the meeting will be conducted by telephone, or by other electronic means, the notice must identify how the meeting will be conducted, as well as instructions explaining how the public may observe.

Notices of open meetings must contain the **date, time, place, and tentative agenda** of the meeting.

Notices of closed meetings must contain the **date, time, and place of the meeting**, and the specific reason in Section 610.021, RSMo., that allows for closing the meeting. In closed meetings, only business directly related to the reason for closure may be discussed. Roll call votes must be taken on the motion to close a meeting, and each vote taken during a closed meeting must be a roll call vote, with each vote recorded in the meeting minutes.

Meeting minutes must record the date, time, and place of the meeting, the members present and absent, and records of all votes taken. Topics about which members of the public did not receive at least 24 hours' notice should not be discussed during the meeting, unless it is impossible or impractical to provide 24 hours' notice, in which case the reason for not providing 24 hours' notice must be noted in the minutes.

Public governmental bodies are required to allow recording at open meetings, though they may set rules within their Sunshine Law policy to minimize disruption. Recording a closed meeting without permission of the public governmental body is a class C misdemeanor.

While the Sunshine Law mandates that most meetings of public governmental bodies shall be open to the public, it does not require that members of the public be permitted to speak at these meetings.



## RECORDS OF PUBLIC GOVERNMENT BODIES

Records prepared or retained by or for public governmental bodies are subject to the Sunshine Law. Law enforcement records are subject to the same presumption of openness applicable to other public records, and receive separate treatment under the Sunshine Law.

Record requests should be directed to a public governmental body's Custodian of Records. While not required, it may be helpful to submit requests in writing. A request for general information or stray data is not necessarily the same thing as a request for records unless that information or data is found within an existing record. Requests should be prepared carefully and precisely, and the best practice is to cite Chapter 610, RSMo., in a written request. Public governmental bodies are not required to create records in order to respond to a records request. A standard records request form is included at the end of this guide.

The Custodian of Records must respond to requests within three business days, by: (1) providing the requested records; (2) informing the requestor that the records sought are closed, and citing the proper provision for closure; or, (3) explaining the cause of the delay and estimating when the records will be provided. The day a request is received by the Custodian of Records does not count as one of the three business days. The time for providing access may exceed three business days for reasonable cause.



Public governmental bodies are strongly encouraged to make information available in usable electronic formats, and requests that records be provided in a particular format must be honored if the public governmental body is able to produce the record in the format requested.

If the Custodian of Records determines that requested records are closed, then he or she must explain the reason for closure in writing, citing the specific provision permitting closure, within three days of request for explanation.

If a record contains both open and closed material, access must be provided to the open material.

## **CHARGES ALLOWED**

Copy fees of not more than 10 cents per page 9" x 14", or smaller, plus research time, (billed at actual cost of employees that result in the lowest amount of charges for search, research, and duplication time), are allowed. Persons requesting public records may request an estimate of the cost. Public governmental bodies may require advance payment of fees, and may also decide to reduce or waive fees in the public interest.

## **BRIEF SUMMARY REGARDING LAW ENFORCEMENT RECORDS**

Records relating to law enforcement operations are addressed in a specific set of statutes within Chapter 610. In general, all incident and arrest reports are open records, but mobile video recordings and investigative reports are closed records until the investigation becomes inactive, as is an arrest record if the person arrested is not charged within 30 days. Other exceptions apply with respect to certain mobile video recordings and portions of records which, if released, would endanger victims, witnesses, undercover officers, or other persons, or which would jeopardize a criminal investigation. Special rules apply to information gained from 911 calls, and particularly graphic crime scene photographs and videos are generally closed.

## **CONCLUSION**

Again, this brief summary is included in order to give a broad understanding of Sunshine Law basics. Before making any decision on behalf of a public governmental body, be sure to review all relevant sections within Chapter 610, RSMo.

# FAQs - Public Government Body

**1) How much can a public governmental body charge for records requests?** Section 610.026.1(1), RSMo, allows a public governmental body to charge up to 10 cents per page for standard paper copies, the average hourly rate of pay for clerical staff to duplicate documents, and the actual cost of the research time for fulfilling the request. This provision also requires that the public governmental body use the lowest salaried employees capable of searching, researching, and copying the records. Fees for accessing records on other media, or non-standard paper copies, shall reflect actual cost involved. The requestor may wish to ask for a breakdown of the costs associated with the request to determine how the public governmental body arrived at the final charge.

**2) Our board goes in to closed session and we don't know what they are going to talk about. Don't they have to let us know why they are closing the meeting?** Yes. Section 610.022, RSMo, requires that public governmental bodies give at least 24 hours notice of each proposed closed meeting and the reason for holding it by reference to the specific exception allowed under § 610.021, RSMo. Section 610.022, RSMo, also states that no public governmental body can move from an open meeting into a closed meeting without a roll call vote, and that the vote and the specific section of § 610.021, RSMo, shall be publicly announced and entered in to the minutes.

**3) I was told my request would be ready in 2 weeks. Doesn't the Sunshine Law say they have to give me the records in 3 days?** Section 610.023.3, RSMo, requires that each request be responded to as soon as possible, but no later than the end of the third business day following the custodian of records' receipt of the request. If access is not granted immediately, the custodian of records is required to explain the reason for the delay and the earliest date and time that the records will be available. Therefore, public governmental bodies are allowed to exceed the three days for production, but they are required to notify you of the delay and explain when they anticipate the records will be ready.

**4) Can a public governmental body add items to the agenda after it has been posted?** Section 610.020.1, RSMo, requires public governmental bodies to post a notice and a tentative agenda for each meeting, and that the agenda be constructed in a manner reasonably calculated to advise the public of the matters to be considered. Further, § 610.020.2, RSMo, requires that this notice be posted at least 24 hours in

advance of the meeting. However, § 610.020, RSMo, includes an exception that, if for good cause, 24 hours notice is impossible or impractical, the public governmental body shall give as much notice as possible. Also, the nature of the good cause justifying the departure from normal requirements shall be stated in the minutes.

**5) Members of the board get together and talk about business outside of meetings. Is that a violation?** Under the Sunshine Law, a meeting takes place when a majority or quorum of a public governmental body gathers to discuss or vote on public business (§ 610.010(5), RSMo, and *Colombo v. Buford*, 935 S.W.2d 690 (Mo. App. W.D. 1996)). Therefore, if less than a quorum of the public body meets to discuss public business, it is not a “meeting” as defined under the Sunshine Law. However, the Sunshine Law will apply to meetings of groups with less than a quorum when the entity is deliberately attempting to evade the Sunshine Law. See, *Colombo*, cited above. For example, a public governmental body may not purposely meet in groups with less than a quorum to discuss public business and then ratify those decisions in a subsequent public meeting.

**6) Board members e-mail each other about public business – is that considered a meeting?** Pursuant to § 610.010(5), RSMo, a public meeting exists when a public body meets and public business is discussed, decided, or public policy is formulated. A single e-mail about an issue would not in and of itself constitute a meeting requiring advance notice. However, by § 610.025, RSMo, any member of a public governmental body who sends an e-mail relating to public business to a majority of the body shall also send a copy to the member’s public office computer or to the custodian of records to be retained as a public record.

**7) A requestor refuses to use our request form and sends numerous e-mails with requests for records. Can we require that they fill out our standard request form?** Section 610.023.3, RSMo, requires that each request for access to public records is to be responded to as soon as possible; it does not specify a manner in which these requests must be submitted. Therefore, a public governmental body may ask that requestors fill out a form, but it can’t require them to do so.

**8) Who can impose penalties for Sunshine Law violations?** Only a court can impose penalties if it finds that the Sunshine Law has been violated, and penalties are assessed only if the violation is found to be knowing or purposeful. A court may also void any action that was taken in violation of the law, but it is at the court’s discretion, after considering if it is in the public interest to do so.

**9) How may we state our motion when we want to enter into a closed session?** One sample motion is: "I move that this meeting be closed, and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, subsection(s) \_\_\_\_, RSMo, for the purpose of (insert the language of the provision(s) cited)."

Please note that the public governmental body should only cite those subsections that are applicable to the material it intends to close (not a standard list of several subsections).

**10) Who is subject to the Sunshine Law?** To determine if the Sunshine Law applies to a body, refer to the definition of public governmental body in § 610.010, RSMo, p. 4, which includes, but is not limited to:

- public bodies created by state constitution or statutes;
- public bodies created by order or ordinance of any political subdivision or district;
- judicial entities when operating in an administrative capacity;
- public bodies created by executive order, including:
  - ✓ any advisory committee or commission appointed by the governor by executive order;
  - ✓ any department or division of the state;
  - ✓ any department or division of any political subdivision of the state;
  - ✓ any department or division of any county or of any municipal government;
  - ✓ any department or division school district;
  - ✓ any department or division of a special purpose district including but not limited to sewer districts and water districts; and
  - ✓ other subdistricts of any political subdivision;
- 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; and
- certain committees or advisory boards appointed by any of the above entities.

**Note:** The custodian of records of any public governmental body shall maintain a list of the policy advisory committees described in this section.

***Or, a body may qualify as a quasi-governmental body under the Sunshine Law, which is defined in § 610.010(4), RSMo, p. 5, and includes, but is not limited to:***

- any person, corporation or partnership organized or authorized to do business in this state by the provisions of chapter 352, 353, or 355, RSMo, or an unincorporated association which either:
  - i. has as its primary purpose to:
    - ✓ enter into contracts with public governmental bodies; or
    - ✓ engage primarily in activities carried out pursuant to an agreement or agreements with public governmental bodies; or
  - ii. performs a statutorily-based public function to:
    - ✓ allocate or issue tax credits, tax abatement, public debt, tax-exempt debt, rights of eminent domain; or
    - ✓ contract leaseback agreements on structures whose annualized payments commit public tax revenues.
- 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.

# FAQs - Law Enforcement

**1) Should a juvenile's name be redacted from a police report before being released pursuant to a Sunshine Law request?** Section 610.100, RSMo, does not directly address the names of juveniles, but another statute that should be considered is § 211.321.3, RSMo, which states: "Peace officers' records. . . of children . . . shall not be open to inspection or their contents disclosed, except by order of the court."

**2) Are criminal records related to a case with a suspended imposition of sentence open or closed records?** If an individual receives a suspended imposition of sentence (SIS), the records are open during the period of probation. Once the individual successfully completes the period of probation, the records are then closed. Section 610.105, RSMo.

**3) Are motorists involved in automobile accidents entitled to an accident report, even if the case is under review with the prosecutor about pending charges?** Generally, a person who was "involved in any incident or whose property is involved in an incident" is entitled to records that might otherwise be closed, including an accident report, "for purposes of investigation of any civil claim or defense." This includes the individual's lawyer, insurance company, or close family member. Section 610.100.4, RSMo. See also Question 4, below.

**4) Under what circumstances can a police agency deny access to police reports that might otherwise be open?** Sections 610.100.3 and 610.100.4, RSMo, state that the agency has the authority to withhold the disclosure of records that may otherwise be subject to disclosure under two circumstances. First, if the agency has an articulable concern over the safety of a victim, witness, or other person if the record is revealed. Second, disclosure is not necessary if the criminal investigation is likely to be jeopardized. However, the agency may need court approval for withholding this information.

**5) Is an employer entitled to closed criminal records of a prospective employee?** Under § 610.120, RSMo, a number of employers (including police agencies) are entitled to closed records for employment purposes. This section also states that the defendant can also have access to his or her closed records. Therefore, a prospective employee can allow other prospective employers to access those closed records, if a proper waiver is signed.

**6) Can a criminal defendant access police records related to his pending case under the Sunshine Law?** No. Attorney General Opinion No. 200-94 states that if criminal charges are filed, disclosures of police reports should occur under the applicable Rules of Criminal Procedure promulgated by the Missouri Supreme Court. As a result, the defendant is generally required to seek his disclosures from the prosecuting attorney and not the law enforcement agencies directly.

**7) How detailed must an incident report be in describing the “immediate facts and circumstances” of the crime or incident?** An incident report provides the general public with only the most basic information about each incident to which the law enforcement agency is called to respond. In some cases, it may be sufficient to describe the incident as a “vehicle accident” or “domestic assault,” but in other situations more detail may be appropriate.

**8) What information is available from a 911 call?** The information that is generally available or open regarding a 911 call is the “incident information” – the date, time, specific location, and immediate facts and circumstances of the call. The recording is inaccessible to the public. Section 610.150, RSMo.

**9) Are closed records to be destroyed?** No, as a general rule, closed records are to be retained but made inaccessible to the public. Section 610.120, RSMo.





# Sample Forms

Section 610.028, RSMo, requires a public governmental body to provide a reasonable written policy. Following is a sample resolution.

## RESOLUTION

**Section 610.023.1**, RSMo, provides that a public governmental body is to appoint a custodian to maintain that body's records and the identity and location of the custodian is to be made available upon request.

**Section 610.026**, RSMo, sets forth that a public governmental body shall provide access to and, upon request, furnish copies of public records.

**Section 610.028.2**, RSMo, provides that a public governmental body shall provide a reasonable written policy in compliance with §§ 610.010 to 610.030, RSMo, regarding the release of information on any meeting, record, or vote.

### IT IS RESOLVED:

1. That (**insert name of custodian**) is appointed custodian of the records of (**insert name of public governmental body**) and that such custodian is located at (**insert specific location, including room, street, address, city, and state**).
2. That said custodian shall respond to all requests for access to or copies of a public record within the time period provided by statute except in those circumstances authorized by statute.
3. That the fees to be charged for access to or furnishing copies of records shall be as hereinafter provided: (**Insert fee schedule. Note: Fees may not exceed 10 cents per page for paper copies 9 by 14 or smaller, plus an hourly fee for duplicating time not to exceed the average hourly rate of pay for clerical staff of the public governmental body. Research time may be billed at actual cost.**)
4. That it is the public policy of (**insert name of public governmental body**) that meetings, records, votes, actions, and deliberations of this body shall be open to the public except as provided by: (**list provisions of § 610.021, RSMo, and other applicable provisions the body wishes to rely on to close records**), which records shall be closed as allowed by law.
5. That (**insert name of governmental body**) shall comply with §§ 610.010 to 610.225, RSMo, the Sunshine Law, as now existing or hereafter amended.

## NOTICE OF OPEN MEETING

This suggested form is intended for use when a public governmental body plans to conduct an open meeting.

**(Insert date and time notice was posted)**

Notice is hereby given that the

**(insert name of public governmental body)** will conduct a meeting at **(insert time)** on **(insert day, month, and year)** at **(insert place where meeting is to be held, or, if the meeting will be conducted by telephone or other electronic means, the location where the public may observe and attend the meeting or directions to access the meeting electronically)**.

The tentative agenda of this meeting includes (list topics):

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## NOTICE OF CLOSED MEETING

This suggested form is intended for use when a public governmental body has voted to close a future meeting and otherwise conformed with state law.

**(Insert date and time notice was posted)**

Notice is hereby given that the **(insert name of public governmental body)** having duly voted to close its meeting, as authorized by **(insert statutory authority, including specific subsection of Section 610.021, RSMo, to close meeting)** will conduct a closed meeting at **(insert time)** on **(insert day, month, and year)** at **(insert place where meeting is to be held)**.



## NOTICE OF OPEN MEETING AND VOTE TO CLOSE PART OF THE MEETING

This suggested form is intended for use when a public governmental body plans to conduct a meeting that is partially open and partially closed but has not yet publicly voted to close the meeting and has otherwise conformed with state law.

**(Insert date and time notice was posted)**

Notice is hereby given that the

**(insert name of public governmental body)** will conduct a meeting at **(insert time)** on **(insert time)** on **(insert day, month, and year)** at **(insert place where meeting is to be held, or, if the meeting will be conducted by telephone or other electronic means, the location where the public may observe and attend the meeting or directions to access the meeting electronically).**

The tentative agenda of this meeting includes (list topics):

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The tentative agenda of this meeting also includes a vote to close part of this meeting pursuant to **(insert statutory authority, including specific subsection of Section 610.021, RSMo, for vote to close meeting).**

## REQUEST TO HAVE OBJECTION TO CLOSED MEETING ENTERED INTO MINUTES

This suggested form is intended for use when a member of a public governmental body objects to a motion to close a meeting pursuant to Section 610.022.6, RSMo, and wishes to have the objection entered into the minutes.

Dear (**insert name of custodian or other person responsible for keeping minutes**):

Having objected to the motion to close the meeting of (**insert name of public governmental body**) on (**insert day, month, and year**) and having made this objection prior to the vote to close the meeting, I wish to have my objection entered into the minutes for that date.

Signature of member \_\_\_\_\_

Insert name of member \_\_\_\_\_

## REQUEST FORM

*Information that can be used to request records from Missouri Public Governmental Bodies*

For your convenience, a sample form is included on the next page that can be used to request records under the Missouri Sunshine Law.

### On the Web

This sample form is available on the Attorney General's website at **ago.mo.gov** under the "Sunshine Law" listing.

## RECORDS REQUEST FORM

**[Insert name and address of officially designated custodian of records]**

This is a request for records under the Missouri Sunshine Law, Chapter 610, Revised Statutes of Missouri.

I request that you make available to me the following records: \_\_\_\_\_  
**(Describe the records as specifically as possible. Where you are asking for records that cover only a particular period, such as last year or a specific month, identify that time period)**

If you know the subject matter of the records, but do not have additional information, use this alternative:

I request that you make available to me all records that relate to \_\_\_\_\_  
**(Be as specific as possible; include dates if you can)**

If you want and are willing to pay for copies of the records, rather than just being able to see them:

I request that the records responsive to my request be copied and sent to me at the following address: \_\_\_\_\_.

If you believe your request serves the public interest, and is not just for personal or commercial interest, you may ask that the fees be waived:

I request that all fees for locating and copying the records be waived. The information I obtain through this request will be used to \_\_\_\_\_  
**(Tell how you will use the information and why that use is in the public interest)**

Please let me know in advance of any search or copying if the fees will exceed \$\_\_\_\_\_. **(Insert amount you are willing to pay without additional information about the documents)**

If portions of the requested records are closed, please segregate the closed portions and provide me with the rest of the records. If any part of my request for access is denied, please provide a written statement for each legal ground for such denial.

**(Insert your name, address, phone number, or electronic mail address)**

# Court Decisions and Attorney General Opinions

## PUBLIC GOVERNMENTAL BODIES AND PUBLIC MEETINGS

### **JOHNSON v. STATE**, 366 S.W.3d 11 (Mo. 2012)

Reapportionment commission (consisting of six judges from state appellate courts) appointed by Supreme Court pursuant to Art. III, Sec. 2 of the State Constitution, is a “judicial entity.” Because the commission was not acting in an administrative capacity, it was not a “public governmental body” under the sunshine law.

### **STEWART v. WILLIAMS COMMUNICATIONS, INC.**,

85 S.W.3d 29 (Mo. App. W.D. 2002)

A private, for-profit corporation that lacks the power to formulate public policy, make rules, or tax and is not one of the specific entities included in the definition in § 610.010(4), RSMo, is not a public governmental body. Thus, the fact that a utility company possessed eminent domain power did not make it a public governmental body.

### **SNL SECURITIES, L.C. v. NATIONAL ASSOCIATION OF INSURANCE**

**COMMISSIONERS**, 23 S.W.3d 734 (Mo. App. W.D. 2000)

A national association of the chief insurance regulators of all 50 states did not constitute a quasi-public governmental body and therefore was not required to comply with the Sunshine Law.

### **NORTH KANSAS CITY HOSPITAL BOARD OF TRUSTEES v. ST. LUKE’S**

**NORTHLAND HOSPITAL**, 984 S.W.2d 113 (Mo. App. W.D. 1998)

A nonprofit corporation created to carry out the purposes of a municipal hospital and controlled by the hospital’s board of trustees is a quasi-public governmental body and therefore is subject to the Sunshine Law.

### **DEFINO v. CIVIC CENTER CORP.**, 780 S.W.2d 665 (Mo. App. E.D. 1989)

No issue of a Sunshine Law violation was presented to the court where less than a quorum of a board of aldermen met with constituents. The court determined the Sunshine Law does not require public notice of every meeting between a constituent and an alderman.

### **CHARLIER v. CORUM**, 774 S.W.2d 518 (Mo. App. W.D. 1989)

A county sheriff is a “public governmental body” within the meaning of § 610.010(4), RSMo, because the office of sheriff is an administrative entity created by state statute.

**KANSAS CITY STAR COMPANY v. SHIELDS,**

771 S.W.2d 101 (Mo. App. W.D. 1989)

A violation of the Sunshine Law occurred when three members of a four-person budget committee of the city council met with the city budget officer and city manager and discussed the city budget in a luncheon meeting that was not announced as required by § 610.020, RSMo.

**COLOMBO v. BUFORD,**

935 S.W.2d 690 (Mo.App. W.D. 1996)

A “social” gathering is one where persons gather in pleasant companionship with friends and associates. The standard dictionary definition of “informal” is “not formal; conducted or carried out without formal, regularly prescribed or ceremonious procedure; unofficial.” “Unofficial” is defined as “not belonging to, emanating from, or sanctioned or acknowledged by a governing body.”

## RECORDS REQUESTS

**JONES v. JACKSON COUNTY CIRCUIT COURT,**

162 S.W.3d 53 (Mo.App. W.D. 2005)

The Sunshine Law does not require a government body to create a new record upon request, but only to provide access to existing records held or maintained by the public governmental body.

**STATE ex rel. GRAY v. BINGHAM,**

622 S.W.2d 734 (Mo.App. E.D., 1981)

Occupancy permits issued by a city are “public records.” Citizens have a right to inspect and copy public records even if there is no apparent legal interest to be subserved, during business hours and subject to reasonable conditions.

**ANDERSON v. VILLAGE OF JACKSONVILLE,**

103 S.W.3d 190 (Mo. App. W.D. 2003)

Anyone seeking access to public records must communicate a request in language that a reasonably competent custodian of the records would understand. The custodian must be able to identify records with reasonable specificity in order to be able to provide access to them.

**CHASNOFF v. MOKWA,**

466 S.W.3D 571 (Mo.App. E.D., 2015)

The Sunshine Law does not provide for a cause of action against a governmental entity requiring it to close its records. Such a claim must be asserted under a different statute or constitutional provision. The purpose of the Sunshine Law is to open official conduct to the public.



## OPEN RECORDS AND MEETINGS

### **HEMEYER v. KRCG-TV**, 6 S.W.3d 880 (Mo. 1999)

A security videotape of a booking at a county jail is a public record even though the videotape is retained for only days. Also, a public body that brings an action under § 610.027.5, RSMo, to determine its responsibility under the Sunshine Law is liable for reasonable attorney fees because the body brings suit at its own expense under that section.

### **SPRADLIN v. CITY OF FULTON**, 982 S.W.2d 255 (Mo. 1998)

A city's closed-meeting discussions of a proposed golf course violate the Sunshine Law when the discussions do not involve the city's proposed lease of that golf course pursuant to § 610.021(2), RSMo.

### **DEATON v. KIDD**, 932 S.W.2d 804 (Mo. App. W.D. 1996)

A public governmental body may not restrict public access to records by selling exclusive rights to computer tapes of public records to a bidder who then provides the records at a cost to the public.

### **PULITZER PUBLISHING CO. v. MISSOURI STATE EMPLOYEES' RETIREMENT SYSTEM (MOSERS)**, 927 S.W.2d 477 (Mo. App. W.D. 1996)

A public governmental body may not promulgate a rule to close public records where there is no statutory authority for that rule and the records appear to be public pursuant to § 610.021(13), RSMo.

### **MISSOURI PROTECTION AND ADVOCACY SERVICES v. ALLAN**,

787 S.W.2d 291 (Mo. App. W.D. 1990)

A preliminary draft of a report prepared by the U.S. Office of Special Education Programs and in the possession of the Missouri Department of Elementary and Secondary Education is a public record because it is a record retained by a public governmental body. Section 610.010(6), RSMo, does not require a record to be in final form.

### **LIBRACH v. COOPER**, 778 S.W.2d 351 (Mo. App. E.D. 1989)

A severance agreement reached between a school district and superintendent is a public record to be made available for inspection and copying.

### **PROGRESS MISSOURI, INC., v. MISSOURI SENATE**,

494 S.W.3d 1 (Mo.App. W.D., 2016)

The right to record a meeting is satisfied if the public body is creating its own recording. It is not a right for all to record, but a right for a recording to exist and for access to that end product based upon the rules created by the body to minimize disruption of the body's proceedings.

## CLOSURE PERMITTED

### **AMERICAN FAMILY MUTUAL INSURANCE CO. v. MISSOURI DEPARTMENT OF INSURANCE**, 169 S.W.3d 905 (Mo. App. W.D. 2005)

Under § 610.021(14), RSMo, a public body may rely on another statute, in this case a trade secrets provision under §§ 417.450 through 417.467, RSMo, to properly close certain insurance company records.

### **JONES v. HOUSING AUTHORITY OF KANSAS CITY**,

174 S.W.3d 594 (Mo. App. W.D. 2005)

Identifying information of public housing tenants may be closed under the Sunshine Law because those records fall within the exception relating to “welfare cases of identifiable individuals” under § 610.021(8), RSMo.

### **STATE EX REL. MOORE v. BREWSTER**, 116 S.W.3d 630 (Mo. App. E.D. 2003)

An attorney report on alleged misconduct by two school board members is a closed record as legal work product, but must be shared with all board members.

### **CITY OF ST. LOUIS v. CITY OF BRIDGETON**,

806 S.W.2d 717 (Mo. App. E.D. 1991)

A public governmental body purchasing a number of contiguous parcels in a single subdivision is authorized to close records relating to the price paid for one parcel until all the parcels have been acquired.

## FEES

### **R.L. POLK & CO. v. MISSOURI DEPARTMENT OF REVENUE**,

309 S.W.3d 881 (Mo. App. W.D. 2010)

Department of Revenue established a \$3.82 charge per electronic copy for Missouri vehicle or driver’s license records, based on analysis of its costs to maintain and provide electronic copies or records. Court ruled that DOR’s uniform per electronic record fee was not authorized by § 610.026.1(2), RSMo, in that it did not include only the costs of copies, staff time, and the cost of the medium used for duplication. The court recognized that such costs do not necessarily vary on a per record basis.

### **WEBSTER COUNTY ABSTRACT CO., INC. v. ATKISON**,

328 S.W.3d 434 (Mo. App. S.D. 2010)

Recorder of Deeds charged a flat fee (per record charge) for all copies of records as authorized by § 59.130, RSMo, which allows up to \$2.00 for the first page and up to \$1.00 for each additional page. Charge bore no relationship to actual costs. Abstract company filed suit claiming charges violated the Sunshine Law, specifically § 610.026, RSMo. The court held the language at the beginning of § 610.026, RSMo, “[e]xcept as otherwise provided by law” permitted the per record charges authorized by § 59.310, RSMo.

## ENFORCEMENT AND PENALTIES FOR PURPOSEFUL OR KNOWING VIOLATIONS

### **SPRADLIN v. CITY OF FULTON**, 982 S.W.2d 255 (Mo. 1998)

“Purposely” is defined as “intentionally; designedly; consciously; knowingly.” An act is done ‘purposely’ if it is willed, is product of conscious design, intent or plan that is to be done, and is done with awareness of probable consequences. To purposely violate the open meetings law, a member of a public governmental body must exhibit a “conscious design, intent, or plan” to violate the law and do so “with awareness of the probable consequences.”

### **R.L. POLK & CO. v. MISSOURI DEPARTMENT OF REVENUE**,

309 S.W.3d 881 (Mo. App. W.D. 2010)

Polk sought penalties alleging that Department of Revenue purposefully violated the Sunshine Law. The court held that the mere intent to engage in conduct is not purposeful, but a governmental body must exhibit a conscious design, intent, or plan to violate the law with awareness of the probable consequences. Where DOR attempted in the absence of statutory direction to determine a charge based on its interpretation of costs its conduct was not purposeful.

### **GREAT RIVERS ENVIRONMENTAL LAW CENTER v. CITY OF ST. PETERS**,

290 S.W.3d 732 (Mo. App. E.D. 2009)

After Great Rivers requested records from the City, the City invoked its right pursuant to § 610.027.6, RSMo, to seek an opinion from the Attorney General regarding the legality of closing particular records. While opinion request was pending, Great Rivers filed action alleging the City knowingly and purposefully violated the Sunshine Law by not providing the requested records. Court ruled that there was not sufficient evidence to find a knowing or purposeful violation because the City availed itself of § 610.027.6, RSMo.

### **CLIENT SERVICES, INC. v. CITY OF ST. CHARLES**,

182 S.W.3d 718 (Mo. App. E.D. 2006)

Once a party seeks judicial enforcement of the Sunshine Law, the public governmental body has the burden to demonstrate compliance.

### **R.E.J., INC. v. CITY OF SIKESTON**, 142 S.W.3d 744 (Mo. 2004)

City that violated the notice requirements for meeting in adopting an ordinance may have that ordinance voided even if the city repealed the ordinance after being sued.

### **CITY OF SPRINGFIELD v. EVENTS PUBLISHING CO.**,

951 S.W.2d 366 (Mo. App. S.D. 1997)

If a public governmental body seeks a judgment declaring whether a record is open or closed pursuant to § 610.027.5, RSMo, the body must pay both its own costs of bringing the action and the respondent’s attorney fees. *See also, Hemeyer v. KRCG-TV*, p. 39.

**LAUT v. CITY OF ARNOLD**, 491 S.W.3D 191 (Mo. banc 2016)

A knowing violation of the Sunshine Law occurs when a public governmental body has actual knowledge that its conduct violates a statutory provision.

## LAW ENFORCEMENT RECORDS

**STATE EX REL. PULITZER MISSOURI NEWSPAPERS, INC. v. SEAY**,  
330 S.W.3d 823 (Mo. App. S.D. 2011)

City's former police chief was given a suspended imposition of sentence and placed on probation. The court ordered the file to be a closed and confidential file. Thereafter, the judge denied a newspaper publisher's request to review file. The court of appeals found the publisher was entitled to review the file because the former chief's case was not finally terminated as of the date of the request. Section 610.105, RSMo, provides records of a suspended imposition of sentence are closed records when the case is finally terminated. On the date the publisher inquired about the file, the case had not been finally terminated because the former chief, who had received a suspended sentence, had not yet completed his probation.

**GUYER v. CITY OF KIRKWOOD**, 38 S.W.3d 412 (Mo. 2001)

A complaint alleging criminal misconduct by a police officer is an "incident report," and a report concerning investigation into the complaint is an "investigative report" under § 610.100, RSMo. Those records can be closed only on grounds specified in § 610.100, RSMo, for closing law enforcement records. They cannot be closed under § 610.021(3) or (13), RSMo, on grounds that they are personnel records or related to disciplining or firing of an employee.

**STATE EX. REL. GOODMAN v. ST. LOUIS BOARD OF POLICE COMMISSIONERS**, 181 S.W.3d 156 (Mo. App. E.D. 2005)

An "incident report" as defined in § 610.100, RSMo, only includes those elements described in its definition. Other information, such as phone numbers and addresses, is not subject to disclosure.

**SCROGGINS v. MISSOURI DEPARTMENT OF SOCIAL SERVICES**,  
227 S.W.3d 498 (Mo. App. W.D. 2007)

The director of the Children's Division has discretion to release records and reports that it generates, but investigative reports of law enforcement agencies provided to the Children's Division are closed records under § 610.100.2, RSMo, until the law enforcement investigation becomes inactive.

**NEWS-PRESS AND GAZETTE CO. v. CATHCART**,  
974 S.W.2d 576 (Mo. App. W.D. 1998)

A coroner is a public governmental body under § 610.010, RSMo. But an autopsy report used in an active investigation is an "investigative report" and is closed under § 610.100, RSMo.

**COX v. CITY OF CHILLICOTHE**, Opinion filed February 13, 2019, WD81748  
The penalty provision within Section 610.027, RSMo., for violations of 610.010 through 610.026 does not apply to potential violations of sections 610.150 and 610.100.2, pertaining specifically to law enforcement records. Further, Section 610.021 is a permissive statute that allows, but does not require, a governmental body to close certain meetings, records, and votes, and it does not provide a punishment for the opening of covered records to the extent a body so chooses. Existing penalty provisions are to be read closely.

## ATTORNEY GENERAL OPINIONS

Occasionally the Attorney General's Office will opine on matters related to the Sunshine Law. While these opinions do not carry the force of law, they are indications of this Office's positions on questions related to these statutes, which the Attorney General has a role in enforcing. The information below was derived from Attorney General opinions issued over the years, is not exhaustive, and is provided only for informational purposes.

The following are examples of entities meeting the definition of "Public Governmental Body," and required to abide by the Sunshine Law:

- A school district budget "task force" appointed by the superintendent to make proposals.
- A municipality's "citizen advisory committee."
- A board of jury commissioners, when acting in an administrative capacity.
- A "board of visitors" established under Section 221.320, RSMo.

The following are examples of "quasi-public governmental bodies," and required to abide by the Sunshine Law:

- A sheltered workshop established by a non-profit corporation.
- The Missouri School Boards Association.

The following are examples of types of information that cannot be closed under the Sunshine Law:

- A list of personal care attendants' addresses.
- The votes of each member of a board or council during closed session, even if the information considered during the closed meeting may be closed.

- Telephone billing records of members of the General Assembly.
- Property record cards prepared and retained by a county assessor.
- Records of the information set out in Section 290.290, RSMo., if retained by the body.
- Records relating to permits to acquire a concealable firearm retained by a county sheriff (though Missouri's concealed-carry law contains its own confidentiality provisions in Section 571.101.9, RSMo.)
- Public meetings regarding consideration of volunteers to citizen boards may not be closed, because board members, like elected officials, are not "employees" of the body.

When closing a meeting or a record, reference to the number of the relevant subdivision in the § 610.021, RSMo, list of exceptions to openness (for example, § 610.021(1), RSMo) is sufficient to meet the requirement of § 610.022, RSMo. A recitation of the words in the relevant subdivision is not required.

Pursuant to § 610.022.2, RSMo, notice of a closed meeting of a public governmental body must include the time, date, and place of the meeting and a reference to the specific statutory exception allowing the meeting to be closed; however, notice of a closed meeting is not required to include a tentative agenda.

Once a public governmental body has properly voted to close a meeting, all members of the general public should be removed from the meeting. The governmental body cannot discriminate regarding which members of the public it might wish to remove or allow to stay, though the case of *Smith v. Sheriff*, 982 S.W.2d 775 (Mo. App. E.D. 1998), recognizes that a body may allow certain members of the public into a closed meeting to provide information to the body.



# The Sunshine Law

**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;
  - (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, 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 leaseback 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;

(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, decided, or public policy formulated, whether such meeting is conducted in person or by means of communication equipment, including, but not limited to, conference call, video conference, internet chat, or internet message board. 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 or who are participating via videoconferencing. When it is necessary to take votes by roll call in a meeting of the public governmental body, due to an emergency of the public body, with a quorum of the members of the public body physically present and in attendance and less than a quorum of the members of the public governmental body participating via telephone, facsimile, Internet, or any other voice or electronic means, the nature of the emergency of the public body justifying that departure from the normal requirements shall be stated in the minutes. Where such emergency exists, the votes taken shall be regarded as if all members were physically present and in attendance at the meeting.

### **610.020. Notice of meetings, when required – recording of meetings to be allowed, guidelines, penalty – accessibility of meetings – minutes of meetings to be kept, content – voting records to be included.**

**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 website 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 and closed records authorized when, exceptions.**

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 government 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, policies and specific response plans 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. Financial records related to the procurement of or expenditures relating to operational guidelines, policies or plans purchased with public funds shall be open. 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;

**(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;

**(20)** The portion of a record that identifies security systems or access codes or authorization codes for security systems of real property;

**(21)** 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;

**(22)** 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



**(23)** 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.

**(24)** Records relating to foster home or kinship placements of children in foster care under section 210.498.

### **610.022. Closed meetings, procedure and limitation – public records presumed open unless exempt – objections to closing meetings or records, procedure.**

**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. Public record containing exempt and nonexempt materials, nonexempt to be made available – deleted exempt materials to be explained, exception.**

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 exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

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

Any member of a public governmental body who transmits any message relating to public business by electronic means shall also concurrently transmit that message to either the member's public office computer or the custodian of records in the same format. 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, 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 appropriate 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, purposeful violations – 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. Governmental agencies to provide information by electronic services, contracts for public records databases, requirements, electronic services defined – division of data processing may be consulted.**

**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 shall 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 online or stored in an electronic record-keeping system used by the agency. Such contract shall 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 shall not take priority over the primary responsibilities of a public governmental body. For purposes of this section the term "electronic services" means online 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 information technology services division 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. Executive agency disclosure of closed records, purpose, procedure – executive agency defined.**

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. State entity not to disclose Social Security number, exceptions.**

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.

**610.100. Definitions – arrest and incident records available to public—closed records, when--record redacted, when--access to incident reports, record redacted, when--action for disclosure of investigative report authorized, costs--application to open incident and arrest reports, violations, civil penalty--identity of victim of sexual offense--confidentiality of recording.**

**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;

**(6) “Mobile video recorder”**, any system or device that captures visual signals that is capable of installation and being installed in a vehicle or being worn or carried by personnel of a law enforcement agency and that includes, at minimum, a camera and recording capabilities;

**(7) “Mobile video recording”**, any data captured by a mobile video recorder, including audio, video, and any metadata;

**(8) “Nonpublic location”**, a place where one would have a reasonable expectation of privacy, including, but not limited to a dwelling, school, or medical facility.

**2. (1)** 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.

**(2)** Notwithstanding any other provision of law other than the provisions of subsections 4, 5 and 6 of this section or section 320.083, mobile video recordings and investigative reports of all law enforcement agencies are closed records until the investigation becomes inactive.

**(3)** 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.

**(4)** Except as provided in subsections 3 and 5 of this section, a mobile video recording that is recorded in a nonpublic location is authorized to be closed, except that any person who is depicted in the recording or whose voice is in the recording, a legal guardian or parent of such person if he or she is a minor, a family member of such person within the first degree of consanguinity if he or she is deceased or incompetent, an attorney for such person, or insurer of such person, upon written request, may obtain a complete, unaltered, and unedited copy of a recording under and pursuant to this section.

**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 legal guardian or a parent of such person if he or she is a minor, family member of such person within the first degree of consanguinity if such person is deceased or incompetent, attorney for a person, or insurer of a person involved in any incident or whose property is involved in an incident, may obtain any records closed pursuant to this section or section 610.150 for purposes of investigation of any civil claim or defense, as provided by this subsection. Any individual, legal guardian or parent of such person if he or she is a minor, 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. (1)** Any person may bring an action pursuant to this section in the circuit court having jurisdiction to authorize disclosure of a mobile video recording or the information contained in an investigative report of any law enforcement agency, which would otherwise be closed pursuant to this section. The court may order that all or part of a mobile video recording or the information contained in an investigative report be released to the person bringing the action.

**(2)** 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.

**(3)** In making the determination as to whether a mobile video recording shall be disclosed, the court shall consider:

**(a)** Whether the benefit to the person bringing the action or the benefit 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 mobile video recording in regard and with respect to the need for law enforcement agencies to effectively investigate and prosecute criminal activity;

**(b)** Whether the mobile video recording contains information that is reasonably likely to disclose private matters in which the public has no legitimate concern;

**(c)** Whether the mobile video recording is reasonably likely to bring shame or humiliation to a person of ordinary sensibilities; and

**(d)** Whether the mobile video recording was taken in a place where a person recorded or depicted has a reasonable expectation of privacy.

**(4)** The mobile video recording or investigative report in question may be examined by the court in camera.

**(5)** If the disclosure is authorized in whole or in part, the court may make any order that justice requires, including one or more of the following:

**(a)** That the mobile video recording or investigative report may be disclosed only on specified terms and conditions, including a designation of the time or place;

**(b)** That the mobile video recording or investigative report may be had only by a method of disclosure other than that selected by the party seeking such disclosure and may be disclosed to the person making the request in a different manner or form as requested;

**(c)** That the scope of the request be limited to certain matters;

**(d)** That the disclosure occur with no one present except persons designated by the court;

(e) That the mobile video recording or investigative report be redacted to exclude, for example, personally identifiable features or other sensitive information;

(f) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

(6) The court may find that the party seeking disclosure of the mobile video recording or 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 mobile video recording or 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 may request that his or her identity be kept confidential until a charge relating to such incident is filed.

8. Any person who requests and receives a mobile video recording that was recorded in a nonpublic location under and pursuant to this section is prohibited from displaying or disclosing the mobile video recording, including any description or account of any or all of the mobile video recording, without first providing direct third-party notice to each person not affiliated with a law

enforcement agency or each non-law enforcement agency individual whose image or sound is contained in the recording, and affording, upon receiving such notice, each person appearing and whose image or sound is contained in the mobile video recording no less than ten days to file and serve an action seeking an order from a court of competent jurisdiction to enjoin all or some of the intended display, disclosure, description, or account of the recording. Any person who fails to comply with the provisions of this subsection is subject to damages in a civil action proceeding.

### **610.103. Criminal background check completed without fee, when.**

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 – not guilty due to mental disease or defect, effect – official records available to victim in certain cases.**

**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, 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, and in-home services provider agencies as defined in section 660.250, in the manner established by section 610.120.

**2.** If the person arrested is charged with an offense found in chapter 566, section 568.045, 568.050, 568.060, 568.065, 568.080, 568.090, or 568.175, 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.**

**1.** Except as otherwise provided under section 610.124, 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 chapter 43. Closed records shall be available to: criminal justice agencies for the administration of criminal justice pursuant to section 43.500, 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 chapter 43 and applicable state law when submitting fingerprints to the central repository; the sentencing advisory commission created in section 558.019 for the purpose of studying sentencing practices in accordance with chapter 43; to qualified entities for the purpose of screening providers defined in chapter 43; the department of revenue for driver license administration; the department



of public safety for the purposes of determining eligibility for crime victims' compensation pursuant to sections 595.010 to 595.075, 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. 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. Arrest record expunged, requirements.**

**1.** Notwithstanding other provisions of law to the contrary, any record of arrest recorded pursuant to section 43.503 may be expunged if:

**(1)** The court determines that the arrest was based on false information and the following conditions exist;

**(a)** There is no probable cause, at the time of the action to expunge, to believe the individual committed the offense;

**(b)** No charges will be pursued as a result of the arrest; and

**(c)** 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; or

**(2)** The court determines the person was arrested for, or was subsequently charged with, a misdemeanor offense of chapter 303 or any moving violation as the term moving violation is defined under section 302.010, except for any intoxication-related traffic offense as intoxication-related traffic offense is defined under section 577.023 and:

**(a)** Each such offense or violation related to the arrest was subsequently nolle prossed or dismissed, or the accused was found not guilty of each offense or violation; and

(b) The person is not a commercial driver's license holder and was not operating a commercial motor vehicle at the time of the arrest.

2. A record of arrest shall only be eligible for expungement under this section if:

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

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

### **610.123. Procedure to expunge, supreme court to promulgate rules – similar to small claims.**

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 for the handling of small claims.

#### **610.124. Destruction of arrest records – removal from all electronic files – FBI requested to expunge – protest to expungement, procedure.**

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 comply with expungement order, penalty – knowingly using expunged record for gain, penalty.**

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 E felony.

**610.126. Expungement does not deem arrest invalid – department of revenue may retain records necessary for administrative actions on driver’s license – power to close or expunge record, limitation.**

**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.

**610.130. Alcohol-related driving offenses, expunged from records, when--procedures, effect--limitations.**

**1.** After a period of not less than ten years, an individual who has pleaded guilty or has been convicted for a first intoxication-related traffic offense or intoxication-related boating offense which is a misdemeanor or a county or city ordinance violation and which is not a conviction for driving a commercial motor vehicle while under the influence of alcohol and who since such date has not been convicted of any intoxication-related traffic offense or intoxication-related boating offense may apply to the court in which he or she pled guilty or was sentenced for an order to expunge from all official records all recordings of his or her arrest, plea, trial or conviction.

**2.** If the court determines, after hearing, that such person has not been convicted of any subsequent intoxication-related traffic offense or intoxication-related boating offense, has no other subsequent alcohol-related enforcement contacts as defined in section 302.525, and has no other intoxication-related traffic offense or intoxication-related boating offenses or alcohol-related enforcement actions pending at the time of the hearing on the application, the court shall enter an order of expungement.

**3.** 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. The effect of such order shall be to restore such person to the status he or she

occupied prior to such arrest, plea or conviction and as if such event had never taken place. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, plea, trial, conviction or expungement in response to any inquiry made of him or her for any purpose whatsoever and no such inquiry shall be made for information relating to an expungement under this section. A person shall only be entitled to one expungement pursuant to this section. Nothing contained in this section shall prevent the director from maintaining such records as to ensure that an individual receives only one expungement pursuant to this section for the purpose of informing the proper authorities of the contents of any record maintained pursuant to this section.

**4.** The provisions of this section shall not apply to any individual who has been issued a commercial driver's license or is required to possess a commercial driver's license issued by this state or any other state.

### **610.131. Expungement for persons less than eighteen years of age at time of offense.**

**1.** Notwithstanding the provisions of section 610.140 to the contrary, an individual who at the time of the offense was under the age of eighteen, and has pleaded guilty or has been convicted for the offense of prostitution under section 567.020 may apply to the court in which he or she pled guilty or was sentenced for an order to expunge from all official records all recordations of his or her arrest, plea, trial, or conviction. If the court determines, after a hearing, that such person was acting under the coercion, as defined in section 566.200, of an agent when committing the offense that resulted in a plea of guilty or conviction under section 567.020, the court shall enter an order of expungement.

**2.** 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. The effect of such order shall be to restore such person to the status he or she occupied prior to such arrest, plea, or conviction and as if such event had never taken place. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, plea, trial, conviction, or expungement in response to any inquiry made of him or her for any purpose whatsoever and no such inquiry shall be made for information relating to an expungement under this section.

## **610.140. Expungement of certain criminal records, petition, contents, procedure - effect of expungement on employer inquiry - lifetime limits.**

**1.** Notwithstanding any other provision of law and subject to the provisions of this section, any person may apply to any court in which such person was charged or found guilty of any offenses, violations, or infractions for an order to expunge records of such arrest, plea, trial, or conviction. Subject to the limitations of subsection 12 of this section, a person may apply to have one or more offenses, violations, or infractions expunged if such offense, violation, or infraction occurred within the state of Missouri and was prosecuted under the jurisdiction of a Missouri municipal, associate circuit, or circuit court, so long as such person lists all the offenses, violations, and infractions he or she is seeking to have expunged in the petition and so long as all such offenses, violations, and infractions are not excluded under subsection 2 of this section. If the offenses, violations, or infractions were charged as counts in the same indictment or information or were committed as part of the same course of criminal conduct, the person may include all the related offenses, violations, and infractions in the petition, regardless of the limits of subsection 12 of this section, and the petition shall only count as a petition for expungement of the highest level violation or offense contained in the petition for the purpose of determining future eligibility for expungement.

**2.** The following offenses, violations, and infractions shall not be eligible for expungement under this section:

- (1)** Any class A felony offense;
- (2)** Any dangerous felony as that term is defined in section 556.061;
- (3)** Any offense that requires registration as a sex offender;
- (4)** Any felony offense where death is an element of the offense;
- (5)** Any felony offense of assault; misdemeanor or felony offense of domestic assault; or felony offense of kidnapping;
- (6)** Any offense listed, or previously listed, in chapter 566 or section 105.454, 105.478, 115.631, 130.028, 188.030, 188.080, 191.677, 194.425, 217.360, 217.385, 334.245, 375.991, 389.653, 455.085, 455.538, 557.035, 565.084, 565.085, 565.086, 565.095, 565.120, 565.130, 565.156, 565.200, 565.214, 566.093, 566.111, 566.115, 568.020, 568.030, 568.032, 568.045, 568.060, 568.065, 568.080, 568.090, 568.175, 569.030, 569.035, 569.040, 569.050, 569.055, 569.060, 569.065, 569.067, 569.072, 569.100, 569.160, 570.025, 570.030, 570.090, 570.100, 570.130, 570.180, 570.223, 570.224, 570.310, 571.020, 571.060, 571.063, 571.070, 571.072,

571.150, 574.070, 574.105, 574.115, 574.120, 574.130, 575.040, 575.095, 575.153, 575.155, 575.157, 575.159, 575.195, 575.200, 575.210, 575.220, 575.230, 575.240, 575.350, 575.353, 577.078, 577.703, 577.706, 578.008, 578.305, 578.310, or 632.520;

**(7)** Any offense eligible for expungement under section 577.054 or 610.130;

**(8)** Any intoxication-related traffic or boating offense as defined in section 577.001, or any offense of operating an aircraft with an excessive blood alcohol content or while in an intoxicated condition;

**(9)** Any ordinance violation that is the substantial equivalent of any offense that is not eligible for expungement under this section; and

**(10)** Any violations of any state law or county or municipal ordinance regulating the operation of motor vehicles when committed by an individual who has been issued a commercial driver's license or is required to possess a commercial driver's license issued by this state or any other state.

**(11)** Any offense of section 571.030, except any offense under subdivision (1) of subsection 1 of section 571.030 where the person was convicted or found guilty prior to January 1, 2017.

**3.** The petition shall name as defendants all law enforcement agencies, courts, prosecuting or circuit attorneys, municipal prosecuting attorneys, central state repositories of criminal records, or others who the petitioner has reason to believe may possess the records subject to expungement for each of the offenses, violations, and infractions listed in the petition. The court's order of expungement shall not affect any person or entity not named as a defendant in the action.

**4.** The petition shall include the following information:

**(1)** The petitioner's:

- (a)** Full name;
- (b)** Sex;
- (c)** Race;
- (d)** Driver's license number, if applicable; and
- (e)** Current address;

**(2)** Each offense, violation, or infraction for which the petitioner is requesting expungement;

**(3)** The approximate date the petitioner was charged for each offense, violation, or infraction; and

**(4)** The name of the county where the petitioner was charged for each offense, violation, or infraction and if any of the offenses, violations, or infractions occurred in a municipality, the name of the municipality for each offense, violation, or infraction; and

**(5)** The case number and name of the court for each offense.

**5.** The clerk of the court shall give notice of the filing of the petition to the office of the prosecuting attorney, circuit attorney, or municipal prosecuting attorney that prosecuted the offenses, violations, or infractions listed in the petition. If the prosecuting attorney, circuit attorney, or municipal prosecuting attorney objects to the petition for expungement, he or she shall do so in writing within thirty days after receipt of service. Unless otherwise agreed upon by the parties, the court shall hold a hearing within sixty days after any written objection is filed, giving reasonable notice of the hearing to the petitioner. If no objection has been filed within thirty days after receipt of service, the court may set a hearing on the matter and shall give reasonable notice of the hearing to each entity named in the petition. At any hearing, the court may accept evidence and hear testimony on, and may consider, the following criteria for each of the offenses, violations, or infractions listed in the petition for expungement:

**(1)** At the time the petition is filed, it has been at least seven years if the offense is a felony, or at least three years if the offense is a misdemeanor, municipal offense, or infraction, from the date the petitioner completed any authorized disposition imposed under section 557.011 for each offense, violation, or infraction listed in the petition;

**(2)** The person has not been found guilty of any other misdemeanor or felony, not including violations of the traffic regulations provided under chapters 304 and 307, during the time period specified for the underlying offense, violation, or infraction in subdivision (1) of this subsection;

**(3)** The person has satisfied all obligations relating to any such disposition, including the payment of any fines or restitution;

**(4)** The person does not have charges pending;

**(5)** The petitioner's habits and conduct demonstrate that the petitioner is not a threat to the public safety of the state; and



**(6)** The expungement is consistent with the public welfare and the interests of justice warrant the expungement.

A pleading by the petitioner that such petitioner meets the requirements of subdivisions (5) and (6) of this subsection shall create a rebuttable presumption that the expungement is warranted so long as the criteria contained in subdivisions (1) to (4) of this subsection are otherwise satisfied. The burden shall shift to the prosecuting attorney, circuit attorney, or municipal prosecuting attorney to rebut the presumption. A victim of an offense, violation, or infraction listed in the petition shall have an opportunity to be heard at any hearing held under this section, and the court may make a determination based solely on such victim's testimony.

**6.** A petition to expunge records related to an arrest for an eligible offense, violation, or infraction may be made in accordance with the provisions of this section to a court of competent jurisdiction in the county where the petitioner was arrested no earlier than three years from the date of arrest; provided that, during such time, the petitioner has not been charged and the petitioner has not been found guilty of any misdemeanor or felony offense.

**7.** If the court determines that such person meets all the criteria set forth in subsection 5 of this section for each of the offenses, violations, or infractions listed in the petition for expungement, the court shall enter an order of expungement. In all cases under this section, the court shall issue an order of expungement or dismissal within six months of the filing of the petition. A copy of the order of expungement shall be provided to the petitioner and each entity possessing records subject to the order, and, upon receipt of the order, each entity shall close any record in its possession relating to any offense, violation, or infraction listed in the petition, in the manner established by section 610.120. The records and files maintained in any administrative or court proceeding in a municipal, associate, or circuit court for any offense, infraction, or violation ordered expunged under this section shall be confidential and only available to the parties or by order of the court for good cause shown. The central repository shall request the Federal Bureau of Investigation to expunge the records from its files.

**8.** The order shall not limit any of the petitioner's rights that were restricted as a collateral consequence of such person's criminal record, and such rights shall be restored upon issuance of the order of expungement. Except as otherwise provided under this section, the effect of such order shall be to restore such person to the status he or she occupied prior to such arrests, pleas, trials, or convictions as if such events had never taken place. No person as to whom such order has been entered shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement

by reason of his or her failure to recite or acknowledge such arrests, pleas, trials, convictions, or expungement in response to an inquiry made of him or her and no such inquiry shall be made for information relating to an expungement, except the petitioner shall disclose the expunged offense, violation, or infraction to any court when asked or upon being charged with any subsequent offense, violation, or infraction. The expunged offense, violation, or infraction may be considered a prior offense in determining a sentence to be imposed for any subsequent offense that the person is found guilty of committing.

**9.** Notwithstanding the provisions of subsection 8 of this section to the contrary, a person granted an expungement shall disclose any expunged offense, violation, or infraction when the disclosure of such information is necessary to complete any application for:

- (1)** A license, certificate, or permit issued by this state to practice such individual's profession;
- (2)** Any license issued under chapter 313 or permit issued under chapter 571;
- (3)** Paid or unpaid employment with an entity licensed under chapter 313, any state-operated lottery, or any emergency services provider, including any law enforcement agency;
- (4)** Employment with any federally insured bank or savings institution or credit union or an affiliate of such institution or credit union for the purposes of compliance with 12 U.S.C. Section 1829 and 12 U.S.C. Section 1785;
- (5)** Employment with any entity engaged in the business of insurance or any insurer for the purpose of complying with 18 U.S.C. Section 1033, 18 U.S.C. Section 1034, or other similar law which requires an employer engaged in the business of insurance to exclude applicants with certain criminal convictions from employment; or
- (6)** Employment with any employer that is required to exclude applicants with certain criminal convictions from employment due to federal or state law, including corresponding rules and regulations.

An employer shall notify an applicant of the requirements under subdivisions (4) to (6) of this subsection. Notwithstanding any provision of law to the contrary, an expunged offense, violation, or infraction shall not be grounds for automatic disqualification of an applicant, but may be a factor for denying

employment, or a professional license, certificate, or permit; except that, an offense, violation, or infraction expunged under the provisions of this section may be grounds for automatic disqualification if the application is for employment under subdivisions (4) to (6) of this subsection.

**10.** A person who has been granted an expungement of records pertaining to a misdemeanor or felony offense, an ordinance violation, or an infraction may answer “no” to an employer’s inquiry into whether the person has ever been convicted of a crime if, after the granting of the expungement, the person has no public record of a misdemeanor or felony offense, an ordinance violation, or an infraction. The person, however, shall answer such an inquiry affirmatively and disclose his or her criminal convictions, including any offense or violation expunged under this section or similar law, if the employer is required to exclude applicants with certain criminal convictions from employment due to federal or state law, including corresponding rules and regulations.

**11.** If the court determines that the petitioner has not met the criteria for any of the offenses, violations, or infractions listed in the petition for expungement or the petitioner has knowingly provided false information in the petition, the court shall enter an order dismissing the petition. Any person whose petition for expungement has been dismissed by the court for failure to meet the criteria set forth in subsection 5 of this section may not refile another petition until a year has passed since the date of filing for the previous petition.

**12.** A person may be granted more than one expungement under this section provided that during his or her lifetime, the total number of offenses, violations, or infractions for which orders of expungement are granted to the person shall not exceed the following limits:

- (1)** Not more than two misdemeanor offenses or ordinance violations that have an authorized term of imprisonment; and
- (2)** Not more than one felony offense.

A person may be granted expungement under this section for any number of infractions. Nothing in this section shall prevent the court from maintaining records to ensure that an individual has not exceeded the limitations of this subsection. Nothing in this section shall be construed to limit or impair in any way the subsequent use of any record expunged under this section of any arrests or findings of guilt by a law enforcement agency, criminal justice agency, prosecuting attorney, circuit attorney, or municipal prosecuting attorney, including its use as a prior offense, violation, or infraction.

**13.** The court shall make available a form for pro se petitioners seeking expungement, which shall include the following statement: "I declare under penalty of perjury that the statements made herein are true and correct to the best of my knowledge, information, and belief."

**14.** Nothing in this section shall be construed to limit or restrict the availability of expungement to any person under any other law.

### **610.145. Stolen or mistaken identity, expungement of records, procedure.**

**1.** (1) If a person is named in a charge for an infraction or offense, whether a misdemeanor or a felony, as a result of another person using the identifying information of the named person or as a result of mistaken identity and the charges were dismissed or such person was found not guilty, the named person may apply by petition or written motion to the court where the charge was last pending on a form approved by the office of state courts administrator and supplied by the clerk of the court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. The court, after providing notice to the prosecuting attorney, shall hold a hearing on the motion or petition and, upon finding that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expungement.

(2) If any person is named in a charge for an infraction or offense, whether a misdemeanor or a felony, as a result of another person using the identifying information of the named person or mistaken identity, and the charge against the named person is dismissed, the prosecutor or other judicial officer who ordered the dismissal shall provide notice to the court of the dismissal, and the court shall order the expungement of all official records containing any entries relating to the person's apprehension, charge, or trial.

**2.** No person as to whom such an order has been entered under this section shall be held thereafter under any provision of law to be guilty of perjury or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of the person's failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial.

**3.** The court shall also order that such entries shall be expunged from the records of the court and direct all law enforcement agencies, the department of corrections, the department of revenue, or any other state or local government agency identified by the petitioner, or the person eligible for automatic expungement under subdivision (2) of subsection 1 of this section, as bearing record of the same to expunge their records of the entries. The

clerk shall notify state and local agencies of the court's order. The costs of expunging the records, as provided in this chapter, shall not be taxed against the person eligible for expungement under this section.

**4.** The department of revenue shall expunge from its records entries made as a result of the charge or conviction ordered expunged under this section. The department of revenue shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged, including the assessment of the driver's license points and driver's license suspension or revocation. Notwithstanding any other provision of this chapter to the contrary, the department of revenue shall provide to the person whose motor vehicle record is expunged under this section a certified corrected driver history at no cost and shall reinstate at no cost any driver's license suspended or revoked as a result of a charge or conviction expunged under this section.

**5.** The department of corrections and any other applicable state or local government agency shall expunge its records as provided in subsection 3 of this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions being expunged. Notwithstanding any other provision of law to the contrary, the normal fee for any reinstatement of a license or privilege resulting under this section shall be waived.

**6.** Any insurance company that charged any additional premium based on insurance points assessed against a policyholder as a result of a charge or conviction that was expunged under this section shall refund such additional premiums for the three-year period immediately prior to the entry of the expungement by the court to the policyholder upon notification and verification of the expungement.

**7.** For purposes of this section, the term "mistaken identity" shall mean the erroneous arrest of a person for an offense as a result of misidentification by a witness or law enforcement, confusion on the part of a witness or law enforcement as to the identity of the person who committed the offense, misinformation provided to law enforcement as to the identity of the person who committed the offense, or some other mistake on the part of a witness or law enforcement as to the identity of the person who committed the offense.

#### **610.150. "911" telephone reports inaccessible, exceptions.**

Except as provided by this section, any information acquired by a law enforcement agency or a first responder 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.

### **610.175. Flight log records after flight, open public records for elected members of executive and legislative branches.**

Any records or flight logs pertaining to any flight or request for a flight after such flight has occurred by any elected member of either the executive or legislative branch shall be open public records under this chapter, unless otherwise provided by law. The provisions of this section shall only apply to a flight on a state-owned plane.

### **610.200. Law enforcement agency log or record of suspected crimes, accidents or complaints, available for inspection and copying.**

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;
  - (c) The factual circumstances surrounding the incident; and
  - (d) A general description of any injuries, property or weapons involved.

### **610.205. Crime scene photographs and video recordings closed records, when--disclosure to next-of-kin or by court order--inapplicability.**

**1.** Crime scene photographs and video recordings, including photographs and video recordings created or produced by a state or local agency or by a perpetrator or suspect at a crime scene, which depict or describe a deceased person in a state of dismemberment, decapitation, or similar mutilation including, without limitation, where the deceased person's genitalia are exposed, shall be considered closed records and shall not be subject to disclosure under the provisions of this chapter; provided, however, that this section shall not prohibit disclosure of such material to the deceased's next of kin or to an individual who has secured a written release from the next of kin. It shall be the responsibility of the next of kin to show proof of the familial relationship. For purposes of such access, the deceased's next of kin shall be:

**(1)** The spouse of the deceased if living;

**(2)** If there is no living spouse of the deceased, an adult child of the deceased; or

**(3)** If there is no living spouse or adult child, a parent of the deceased.

**2.** Subject to the provisions of subsection 3 of this section, in the case of closed criminal investigations a circuit court judge may order the disclosure of such photographs or video recordings upon findings in writing that disclosure is in the public interest and outweighs any privacy interest that may be asserted by the deceased person's next of kin. In making such determination, the court shall consider whether such disclosure is necessary for public evaluation of governmental performance, the seriousness of the intrusion into the family's right to privacy, and whether such disclosure is the least intrusive means available considering the availability of similar information in other public records. In any such action, the court shall review the photographs or video recordings in question in camera with the custodian of the crime scene materials present and may condition any disclosure on such condition as the court may deem necessary to accommodate the interests of the parties.

**3.** Prior to releasing any crime scene material described in subsection 1 of this section, the custodian of such material shall give the deceased person's next of kin at least two weeks' notice. No court shall order a disclosure under subsection 2 of this section which would disregard or shorten the duration of such notice requirement.

**4.** The provisions of this section shall apply to all undisclosed material which is in the custody of a state or local agency on August 28, 2016, and to any such material which comes into the custody of a state or local agency after such date.

5. The provisions of this section shall not apply to disclosure of crime scene material to counsel representing a convicted defendant in a habeas corpus action, on a motion for new trial, or in a federal habeas corpus action under 28 U.S.C. Section 2254 or 2255 for the purpose of preparing to file or litigating such proceedings. Counsel may disclose such materials to his or her client and any expert or investigator assisting counsel but shall not otherwise disseminate such materials, except to the extent they may be necessary exhibits in court proceedings. A request under this subsection shall clearly state that such request is being made for the purpose of preparing to file and litigate proceedings enumerated in this subsection.

6. The director of the department of public safety shall promulgate rules and regulations governing the viewing of materials described in subsection 1 of this section by bona fide credentialed members of the press.

### **610.210. Tax Health care coordination, certain records may be released.**

Notwithstanding any other provisions of law to the contrary, information in law enforcement agency records that would enable the provision of health care to a person in contact with law enforcement may be released for the purpose of health care coordination to any health care provider, as defined in the Health Insurance Portability and Accountability Act of 1996 as amended, that is providing or may provide services to the person.

### **610.225. Tax credit records and documents deemed closed records, when – request for opening records and documents, requirements, fee authorized.**

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, 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.



# Transparency Policy

## **37.070. Transparency policy – public availability of data – broad interpretation of sunshine law requests – breach of the public trust, when.**

- 1.** It shall be the policy of each state department to carry out its mission with full transparency to the public. Any data collected in the course of its duties shall be made available to the public in a timely fashion. Data, reports, and other information resulting from any activities conducted by the department in the course of its duties shall be easily accessible by any member of the public.
- 2.** Each department shall broadly interpret any request for information under section 610.023:
  - (1)** Even if such request for information does not use the words “sunshine request”, “open records request”, “public records request”, or any such similar wording;
  - (2)** Even if the communication is simply an inquiry as to the availability or existence of data or information; and
  - (3)** Regardless of the format in which the communication is made, including electronic mail, facsimile, internet, postal mail, in person, telephone, or any other format.
- 3.** Any failure by a department to release information shall, in addition to any other applicable violation of law, be considered a violation of the department’s policy under this section and shall constitute a breach of the public’s trust.
- 4.** This section shall not be construed to limit or exceed the requirements of the provisions in chapter 610, nor shall this section require different treatment of a record considered closed or confidential under section 610.021 than what is required under that section.

# Freedom of Information Act

*The federal government's public information law*

The federal government also has a sunshine law requiring federal public governmental bodies to open their meetings and records to the public called the Freedom of Information Act (or "FOIA," for short.) There are many differences between the Missouri Sunshine Law and the federal FOIA. The FOIA is not applicable to record requests submitted to the state.

If you are interested in learning more about the FOIA, visit [www.foia.gov](http://www.foia.gov), which will lead you to the relevant federal agencies and walk you through the request process.



# Notes

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Revised February 2019