

IN THE CIRCUIT COURT OF COLE COUNTY  
NINETEENTH JUDICIAL CIRCUIT  
STATE OF MISSOURI

American Civil Liberties Union	)	
of Missouri Foundation, Inc.,	)	
	)	
Daniela Velázquez, and	)	
	)	
Lindsey Vehlewald	)	
	)	
Plaintiffs,	)	
	)	
v.	)	NO:
	)	
Missouri Department of Health and Senior	)	Division:
Services,	)	
	)	
SERVE: Missouri Department of Health	)	
and Senior Services	)	
912 Wildwood Drive	)	
Jefferson City, Missouri 65102	)	
	)	
Defendant.	)	

**PETITION**

1. This action is brought pursuant to the Missouri Sunshine Law, Chapter 610 of the Missouri Revised Statutes, to require public disclosure of certain documents retained by the Missouri Department of Health and Senior Services (“Defendant”) and to seek imposition of a civil penalty against Defendant and an award of attorneys’ fees and costs for Defendant’s knowing or purposeful violation of the Sunshine Law.

2. This Court has jurisdiction over this action pursuant to § 610.010, *et seq.*, RSMo.

3. This Court has jurisdiction to issue injunctions to enforce provisions of the Sunshine Law pursuant to § 610.030, RSMo.

4. Venue for this action is proper in this Court because the Missouri Department of Health and Senior Services is a state agency and has its principal place of business in Cole County, Missouri.

#### Parties

5. Plaintiff American Civil Liberties Union of Missouri Foundation, Inc. (ACLU), is a nonprofit organization created and operating under the laws of the State of Missouri. Amongst its activities is advocacy to protect and further civil liberties within Missouri.

6. Plaintiff Daniela Velázquez is a resident of the State of Missouri.

7. Plaintiff Lindsey Vehlewald is a resident of the State of Missouri.

8. Defendant Missouri Department of Health and Senior Services, is a Missouri state agency.

#### Factual Allegations

9. Defendant is a “[p]ublic governmental body” within the definition of § 610.010(4), RSMo.

10. On November 16, 2017, Plaintiffs Velázquez and Vehlewald, on behalf of Plaintiff ACLU, made a written request to Defendant’s custodian of records seeking copies of documents. In particular, Plaintiffs sought “any lab test results relating to any liquid alleged to have been thrown at police during protests on September 17, 2017.” A copy of Plaintiffs’ request is attached hereto as Exhibit 1 and is incorporated herein by reference.

11. In their November 16, 2017 request, Plaintiffs specifically stated: “If any or part of this request is denied, please send a letter listing the specific exemptions upon which you rely for each denial and provide the contact information for the official to whom we may appeal. Mo. Rev. Stat. § 610.023.4.” Ex. 1.

12. Plaintiffs delivered the written request to Defendant's custodian of records on November 16, 2017, via First Class mail and email.

13. On November 21, 2017, Defendant's attorney responded, acknowledging receipt of the November 16, 2017 request and stating that: "After review, it has been determined that the records you have requested are part of an ongoing criminal investigation and are closed under Section 610.021(14) and 610.100.2(2), RSMo." A copy of Defendant's response is attached hereto as Exhibit 2 and is incorporated herein by reference.

14. The lab test results requested by Plaintiffs were created and retained by Defendant.

15. Defendant has neither the power nor the duty to make arrests.

16. Defendant is not a law enforcement agency.

#### Violation of the Missouri Sunshine Law

17. Defendant is subject to the provisions of Chapter 610 of the Missouri Revised Statutes because it is a public governmental body.

18. Defendant is aware of the requirements of the Sunshine Law and knows that it, as a governmental body, is subject to the requirements of the Sunshine Law.

19. Because of Defendant's refusal to disclose the requested records, Plaintiffs were required to file this Petition in order to obtain a court order requiring disclosure of the requested documents.

20. Defendant's refusal to disclose open records is part of a conscious design, intent, or plan to violate the Sunshine Law with an awareness of the probable consequences.

21. Defendant's failure to produce the requested records is a purposeful, or, in the alternate, knowing violation of the Sunshine Law.

**WHEREFORE** Plaintiffs pray that this Court enter judgment in their favor and against Defendant, and:

- A. Declare that the requested records are open under the Sunshine Law and not subject to any exception that would permit Defendant to close them;
- B. Enter an injunction requiring Defendant to provide Plaintiffs a copy of the records requested;
- C. Find Defendant purposely, or in the alternate, knowingly, violated the Sunshine Law;
- D. Impose a civil penalty against Defendant pursuant to the Sunshine Law;
- E. Award Plaintiffs' attorneys' fees and costs of litigation as authorized by the Sunshine Law; and
- F. Grant to Plaintiffs such other and further relief as is just and proper.

Respectfully submitted,

/s/ Anthony E. Rothert  
Anthony E. Rothert, #44827  
Jessie Steffan, #64861  
ACLU of Missouri Foundation  
906 Olive Street, Suite 1130  
St. Louis, Missouri 63101  
trothert@aclu-mo.org  
jsteffan@aclu-mo.org  
Phone: (314) 652-3114  
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Gillian R. Wilcox, #61278  
ACLU of Missouri Foundation  
406 West 36th Street  
Suite 420  
Kansas City, Missouri 64111  
gwilcox@aclu-mo.org

ATTORNEYS FOR PLAINTIFFS



Custodian of Records  
Missouri Department of Health and Senior Services  
P.O. Box 570  
Jefferson City, MO 65102

Re: Sunshine Request

<sup>16</sup>  
*Sent on November 15, 2017 via First Class mail and electronic mail to info@health.mo.gov*

To Whom It May Concern:

This letter is a request under the Missouri Sunshine Law. Pursuant to the provisions of Chapter 610 of the Missouri Revised Statutes, I request that you provide any lab test results relating to any liquid alleged to have been thrown at police during protests on September 17, 2017.

If any part of this request is denied, please send a letter listing the specific exemptions upon which you rely for each denial and provide the contact information for the official to whom we may appeal. Mo. Rev. Stat. § 610.023.4. This request must “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.” Mo. Rev. Stat. § 610.023.3.

Because this records request is being submitted in the public interest and “is likely to contribute significantly to public understanding of the operation or activities” of the state of Missouri, I ask that you waive any fees or charge a substantially reduced fee pursuant to Mo. Rev. Stat. § 610.026.1(1). However, should you decline to waive or reduce fees, proceed without further approval if the cost does not exceed \$10.00, and send a detailed invoice with the records. If the cost will exceed \$10.00, please inform me of the cost in advance.

I request that these records be sent electronically if possible. Please do not hesitate to contact me with any questions. I appreciate your attention to this matter.

Sincerely,

Daniela Velázquez  
Director of Communications  
ACLU of Missouri

Lindsey Vehlewald  
Communications and Development Associate  
ACLU of Missouri

**EXHIBIT 1**

**Jessie Steffan**

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**From:** Katie Hinnners  
**Sent:** Tuesday, November 21, 2017 10:46 AM  
**To:** Jessie Steffan  
**Subject:** FW: Request for Records  
**Attachments:** 2017-11-16 Sunshine Request.pdf

**Importance:** High

FYI

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**From:** Hollis, Emily [mailto:Emily.Hollis@health.mo.gov]  
**Sent:** Tuesday, November 21, 2017 10:31 AM  
**To:** Katie Hinnners <khinnners@aclu-mo.org>  
**Subject:** FW: Request for Records  
**Importance:** High

Dear Ms. Hinnners:

The Missouri Department of Health and Senior Services is in receipt of the attached request. After review, it has been determined that the records you have requested are part of an ongoing criminal investigation and are closed under Sections 610.021(14) and 610.100.2(2), RSMo. Thank you.

*Emily E. Hollis*

Office of General Counsel  
Employee Disqualification Unit  
Dept. of Health & Senior Services  
P.O. Box 570  
Jefferson City, MO 65102  
Phone: (573) 751-6005  
Facsimile: (573) 751-0247  
Email: [Emily.Hollis@health.mo.gov](mailto:Emily.Hollis@health.mo.gov)

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**From:** Katie Hinnners [mailto:khinnners@aclu-mo.org]  
**Sent:** Thursday, November 16, 2017 10:15 AM  
**To:** Info, Info  
**Subject:** Request for Records

Good morning,

Please see the attached request for records from the ACLU of Missouri. Thank you in advance for your response.

Sincerely,

Katie Hinnners-Mueller  
Office Manager/Executive Assistant  
ACLU of Missouri  
906 Olive St., Suite 1130  
St. Louis, MO 63101  
314-652-3114, ext. 220  
[khinnners@aclu-mo.org](mailto:khinnners@aclu-mo.org)

*Because freedom can't protect itself.*

Join us on  and 

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To: [khinnners@aclu-mo.org](mailto:khinnners@aclu-mo.org)

Message Score: 10

High (60): **Pass**

From: [emily.hollis@health.mo.gov](mailto:emily.hollis@health.mo.gov)

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Medium (75): **Pass**

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