

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

FILED

OCT 03 2012

COLE COUNTY
CIRCUIT COURT

American Civil Liberties Union of
Eastern Missouri Fund, Inc., and

Michael K. Hill,

Plaintiffs,

v.

Missouri Department of Corrections,

SERVE: George Lombardi
2729 Plaza Drive
P.O. Box 236
Jefferson City
Missouri 65102

Defendant.

NO.:

DIVISION:

12AC-CC00692

PETITION

1. This action is brought pursuant to Missouri's Sunshine Law, Chapter 610 of the Revised Statutes of Missouri, to require public disclosure of certain documents maintained by the Missouri Department of Corrections.

2. This Court has jurisdiction over this action pursuant to MO. REV. STAT. § 610.100, *et seq.*

3. Venue for this action is proper in this Court because the principal place of business of the Department of Corrections is in Cole County.

Parties

4. Plaintiff American Civil Liberties Union of Eastern Missouri Fund, Inc. (ACLU), is a not-for-profit organization created and operating under the laws of the State of Missouri. Amongst its activities is advocacy to protect and further civil liberties within Eastern Missouri.

5. Plaintiff Michael Hill works with the American Civil Liberties Union of Eastern Missouri.

6. Defendant Missouri Department of Corrections (DOC) is a governmental entity created by statutes of the State of Missouri and is a political subdivision of the State of Missouri.

Factual Allegations

7. On or about March 27, 2012, Michael Hill, on behalf of the ACLU of Eastern Missouri Fund, sent a Sunshine Law request to James Hurley, the warden of, and custodian of records for, the Northeast Correctional Center. A copy of the request is attached hereto as Exhibit 1 and is incorporated herein by reference.

8. The March 27, 2012 request was explicitly made pursuant to the Missouri Sunshine Law, MO. REV. STAT. § 610.010, *et seq.* Ex. 1.

9. The March 27, 2012, request sought “copies of any and all records relating to [Allaeddin Qandah’s] ‘IRR # NECC 11321 – property damage.’ ” Ex. 1.

10. The records requested are “public records” within the meaning of MO. REV. STAT. § 610.010(6).

11. On March 28, 2012, Hill received a call from one of James Hurley’s staff members instructing Hill to direct his request to David Hansen, the General Counsel for the Missouri Department of Corrections.

12. On March 28, 2012, Hill wrote, as instructed, to David Hansen, requesting “copies of any and all records relating to “IRR # NECC 11321 – property damage” and including a copy of his March 27, 2012 Sunshine request that was addressed to James Hurley. A copy of the letter, with enclosure, is attached hereto as Exhibit 2 and is incorporated herein by reference.

13. On or about May 17, 2012, Heather L. McCreery, Legal Counsel for DOC, replied in writing denying the request for the records, stating: "Records regarding the filing and disposition of inmate grievances are closed and not subject to disclosure under the Missouri Sunshine Law. See Section 610.021(14) and 28 C.F.R. § 40.10." A copy of the letter is attached hereto as Exhibit 3 and is incorporated herein by reference.

14. Further efforts to resolve this issue of whether the requested records are open, or closed, were unsuccessful.

15. None of the requested records have been produced.

Violation of Missouri's Sunshine Law

16. As an agency of the State of Missouri, the Missouri Department of Corrections is subject to provisions of MO. REV. STAT. § 610.010 *et seq.*

17. The records requested by Plaintiffs are public records under the meaning of the Missouri Sunshine Law.

18. No provision of the Sunshine Law requires that the requested records be closed to the public.

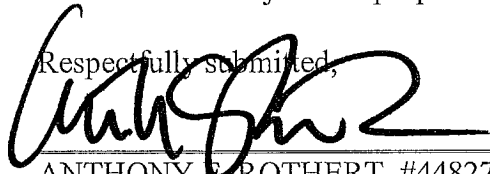
19. Defendant's failure to disclose the records is a purposeful, or in the alternate knowing, violation of the Sunshine Law and without lawful reason or excuse causes irreparable injury to the Plaintiffs and the public by depriving them of public information to which they are entitled.

20. As a result of Defendant's actions, Plaintiffs have incurred and will continue to incur expenses for attorneys' fees and costs.

WHEREFORE, Plaintiffs pray that this Court find in their favor and against Defendant
and:

- A. Enter an injunction prohibiting Defendant or its employees from withholding the records referred to and described herein, requiring Defendant to produce the records;
- B. Find that Defendant's violations of the Sunshine Law described herein are purposeful or, in the alternate, knowing;
- C. Impose a civil penalty against Defendant pursuant to the Sunshine Law;
- D. Award Plaintiffs' attorneys' fees and costs of litigation; and
- E. Grant to such other and further relief as is just and proper.

Respectfully submitted,



ANTHONY L. ROTHERTH, #44827

GRANT R. DOTY, #60788

AMERICAN CIVIL LIBERTIES UNION OF
EASTERN MISSOURI

454 Whittier Street

St. Louis, Missouri 63108

PHONE: (314) 652-3114

FAX: (314) 652-3112

tony@aclu-em.org

grant@aclu-em.org

Attorneys for the Plaintiffs



March 27, 2012

James Hurley
Warden
Northeast Correctional Center
13698 Airport Road
Bowling Green, MO 63334

Dear Mr. Hurley:

The ACLU of Eastern Missouri is currently investigating a complaint submitted by Allaeddin Qandah (DOC ID #1174251). Pursuant to the provisions of Chapter 610 of the Missouri Revised Statutes, I request that you provide copies of any and all records relating to "IRR # NECC 11321 -- property damage."

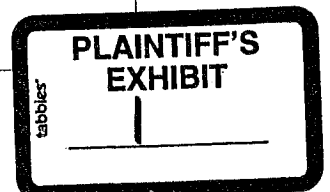
If any or part of this request is denied, please send a letter listing the specific exemptions upon which you rely for each denial, and provide the name and address of the official to whom I may appeal. Mo. Rev. Stat. § 610.023.4. This request must "be acted upon as soon as possible, but in no event 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 operations or activities" of your department, 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 of producing the copies does not exceed \$10.00 and send an invoice with the records. If the cost will exceed \$10.00, please contact my office to inform me of the cost prior to making copies.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Michael K. Hill
Assistant to the Legal Director
(314) 669-3426 | Direct
(314) 652-3112 | Facsimile

American Civil Liberties Union of Eastern Missouri
454 Whittier Street · Saint Louis, Missouri 63108





March 28, 2012

David Hansen
General Counsel
Missouri Department of Corrections
2729 Plaza Drive
P.O. Box 236
Jefferson City, MO 65102
Facsimile: (573) 751-4099

Dear Mr. Hansen:

The ACLU of Eastern Missouri is currently investigating a complaint submitted by Allaeddin Qandah (DOC ID #1174251). On March 27, 2012, I submitted the attached request for records to James Hurley, Warden of NECC. This morning, I received a telephone call from his staff instructing me to direct my request to you. As such, this letter serves to redirect the attached request to you, effective March 28, 2012.

I appreciate your attention to this matter. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Michael K. Hill
Assistant to the Legal Director
(314) 669-3426 | Direct
(314) 652-3112 | Facsimile

Enclosure

American Civil Liberties Union of Eastern Missouri
454 Whittier Street · Saint Louis, Missouri 63108





March 27, 2012

James Hurley
Warden
Northeast Correctional Center
13698 Airport Road
Bowling Green, MO 63334

Dear Mr. Hurley:

The ACLU of Eastern Missouri is currently investigating a complaint submitted by Allaeddin Qandah (DOC ID #1174251). Pursuant to the provisions of Chapter 610 of the Missouri Revised Statutes, I request that you provide copies of any and all records relating to "IRR # NECC 11321 – property damage."

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 name and address of the official to whom I 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 operations or activities" of your department, 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 of producing the copies does not exceed \$10.00 and send an invoice with the records. If the cost will exceed \$10.00, please contact my office to inform me of the cost prior to making copies.

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Sincerely,

Michael K. Hill
Assistant to the Legal Director
(314) 669-3426 | Direct
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American Civil Liberties Union of Eastern Missouri
454 Whittier Street · Saint Louis, Missouri 63108

Jeremiah W. (Jay) Nixon
Governor



George A. Lombardi
Director

2729 Plaza Drive
P. O. Box 236
Jefferson City, MO 65102
Telephone: 573-751-2389
Fax: 573-526-0880
TDD Available

State of Missouri
DEPARTMENT OF CORRECTIONS
Ad. Excelleum Conamur – "We Strive Towards Excellence"

May 17, 2012

Michael K. Hill
American Civil Liberties Union of Eastern Missouri
454 Whittier Street
St. Louis, MO 63108

RE: Request for Public Records

Dear Mr. Hill:

In your letter of March 27, 2012, you request "copies of any and all records relating to 'IRR #NECC 11321 – property damage' submitted by Offender Allaeddin Qandah. A copy of your letter is enclosed for your convenience.

Records regarding the filing and disposition of inmate grievances are closed and not subject to disclosure under the Missouri Sunshine Law. *See* Section 610.021(14) and 28 C.F.R. §40.10. Offender Qandah should have received a copy of his paperwork at the time the IRR was filed; however, if he needs another copy of the documents he filed, he may direct his request to the grievance officer at the Northeast Correctional Center, Mr. Brook Kurth.

If you have any questions regarding this response, please contact me at (573) 522-1634 or at the address provided above.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather L. McCreery", is written over a horizontal line.

Heather L. McCreery
Legal Counsel

c: James Hurley, Warden, NECC
Brook Kurth, Grievance Officer, NECC

